

United States 6  
Circuit Court of Appeals  
For the Ninth Circuit.

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RUFO C. ROMERO,

Appellant,

vs.

P. J. SQUIER, Warden, United States Peniten-  
tiary, McNeil Island, Washington,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Western District of Washington,  
Southern Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Seattle, Washington

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In the District Court of the United States

Western District of Washington

No. 370

In the Matter of the Application of RUFO C.  
ROMERO for a Writ of Habeas Corpus.

PETITION FOR WRIT OF HABEAS CORPUS

To the District Court of the United States for the  
Western District of Washington :

Your petitioner, Rufo C. Romero, would most  
respectfully represent :

I. I am a citizen of the Philippine Islands, and  
owing allegiance to the United States.

II. I am unjustly and unlawfully detained and imprisoned by color of authority of the United States, in the custody of the Warden, United States Penitentiary, McNeil Island, State of Washington.

III. The cause or pretext of such detention is a certain order of commitment by a general court martial held and convened at Fort William McKinley, Philippine Islands, on November 25, 1940, ordering that your petitioner be imprisoned and detained in said jail for a period of 15 years; a copy of the record of such trial is made a part hereof.

IV. Said restraint and imprisonment are illegal and in violation of Article IV and Article VI of the Amendments to the Constitution of the United States; in violation of the act of June 4, 1920, (chapter 227, subchap. II; 41 Stat. 794); and is contrary to the weight of authority and not conformable to law, in that:

1. Your petitioner, Rufo C. Romero, was a captain (14th Engineers, Philippine Scouts). He was charged of violation of the 96th Article of War. There were four specifications of conspiracy [1\*] to unlawfully communicate certain maps marked "secret" to certain persons not entitled to receive such information, and unlawfully reproduce certain maps marked "secret" (R. pp. 7, 8). The maps were withdrawn at the conclusion of the trial and not made a part of the Record. The importance and secrecy of the maps, as emphasized by the prosecution, was doubtful and questioned, for they were only old maneuver maps, obsolete, and some of them

\*Page numbering appearing at foot of page of original Transcript of Record.

were of the kind usually used as wrapping paper at the Engineer Office. While your petitioner was in diligent performance of his duties as a Topographical Officer of the 14th Engineers which includes the care and handling of maps and correcting them, one Major J. K. Evans, chief of intelligence, Philippine Department, United States Army, employed one Anis Gepte (prosecution's principal witness) who solicited and induced petitioner to show him the maps in question. Major Evans himself testified that he told Anis Gepte what to ask (R. p. 285). It was at his instigation, that the maps were finally shown (R. p. 266). The petitioner's house where he was searched and arrested was situated outside of the military reservation.

Major Evans made arrangements with officers of the Philippine Constabulary who are possessed of police authority, to secure search warrants (R. p. 273). A warrant was issued by the justice of the peace of the town of Pasay, Province of Rizal, Philippine Islands (a copy of which was made a part of the Record, and attached at the fifth page from the last of vol. II), directed to any police officer to search the residence of petitioner for stolen maps belonging to the United States Army, and if such were found, to bring it forthwith before him in the Justice of the Peace Court of Pasay, Rizal. Major Evans had no warrant (R. p. 290). When all was in readiness according to his instructions, he, in company with the police officers armed with the search warrant issued by the justice of the peace, entered the residence [2] of petitioner (R. p. 273).



He searched the house, took possession of anything that might be used against petitioner, and arrested petitioner and took him into custody at Fort William McKinley. He also brought the articles he seized to Fort William McKinley. (R. p. 274).

2. Petitioner engaged a civilian counsel of his own selection who was a member of the bar of the Philippine Islands. At the early stage of the trial the court martial excluded this counsel from the court room (R. p. 202).

3. The act charged resulted through the instigation and creation of the Government officer and agent and its commission procured by them. (R. pp. 266; 285; 442, 447; 513, 524-25.)

4. The original record of the proceedings transmitted to the Judge Advocate General of the Army was not complete, as required by statute.

Wherefore, your petitioner prays that a writ of habeas corpus be issued by this Court, directed to the Warden, McNeil Island, State of Washington, and that your petitioner be ordered discharged from detention and imprisonment thereat; and for such other and further relief as to this Court may appear and seem just and proper.

Dated, March 16, 1942.

**RUFO C. ROMERO**

Petitioner

**PEDRO P. SEMSEM**

Attorney for Petitioner

1126 Chaplin St., SE.

Washington, D. C.



United States of America,  
Western District of Washington—ss.

Rufo C. Romero, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and the said statements made are true as he verily believes.

RUFO C. ROMERO

Petitioner [3]

Subscribed and sworn to before me this 26 day of March, 1942.

[Seal]

JOHN C. BASS

Notary Public

My Commission Expires Feb. 1, 1946. [4]

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[Title of District Court and Cause.]

STATEMENT OF POINTS IN SUPPORT  
OF PETITION.

I. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. (a) Evidence obtained by unconstitutional use of search warrants is not admissible, and conviction of crime so obtained must be reversed. (b) Search by police officers under direction of Federal agents, contrary to laws limiting authority of such agents is unlawful and evidence obtained should be suppressed. (c) The fact that a search prosecuted in

violation of the 4th Amendment to the Constitution is successful in revealing evidence of unlawful acts does not validate it; and invalid search is not made lawful by what it brings to light.

Article IV, Amendments to U. S. Constitution;

Garske vs. United States, 1 F. (2d) 620;

United States vs. Costanzo, 13 F. (2d) 259;

United States vs. Spallino, 21 F. (2d) 567;

Byars vs. United States, 273 U. S. 28.

II. The accused shall have the right to be represented by counsel for his defense. A court-martial has no power to refuse an attorney the right to appear before it if he is properly licensed to practice in the courts of the State. Exclusion from the court room of his counsel is a clear invasion of his constitutional right notwithstanding the other counsel who remain are capable of taking care of his interests.

Article VI, Amendments to U. S. Constitution;

Act of June 4, 1920—41 Stat. 790;

Articles of War, art. 17;

R. C. L. vol. 18, p. 1072;

Jackson vs. State, 115 SW. 262;

Powell vs. Alabama, 287 U. S. 45;

Johnson vs. Zerbst, 304 U. S. 458 (decided May 23, 1938);

Smith vs. O'Grady, 61 Sup. Ct. 572 (decided Feb. 17, 1941). [5]

III. When petitioner's constitutional right against unreasonable search and seizure was violated, and further denied the assistance of counsel of his own selection, any proceedings thereafter is a denial of due process of law as secured by the 14th Amendment to the Constitution of the United States and such proceedings are void, and the court-martial no longer has authority to proceed, and was no longer a court of competent jurisdiction.

Byars vs. United States (*supra*);

Powell vs. Alabama (*supra*);

Johnson vs. Zerbst (*supra*);

Smith vs. O'Grady (*supra*).

IV. Prosecution cannot be had where it appears that the accused was induced or led to commit the act charged by active cooperation and instigation of public officers.

United States vs. Healey, 202 F. 349;

United States vs. Adams, 59 F. 674;

Dalton vs. State, 39 SE. 468.

V. When the maps which were the gist of the evidence from which petitioner was convicted were not included in the Record transmitted to the Judge Advocate General, the statute was not complied with, and the Review Board that reviewed and approved the decision had no authority to approve the sentence of the court-martial when the Record was defective.

Act of June 4, 1920, c. 227, subchap. II; 41 Stat. 794;

Articles of War, art. 35;

3 Op. Atty. Gen. 545.

VI. The authority of a court-martial is derived from the statute, and it must proceed in conformity therewith. Being an inferior court of limited jurisdiction, its judgments may be attacked collaterally, and the validity of its proceedings can be revised upon a hearing in habeas corpus. When a court-martial has disregarded the Constitution and the statute under which it was created, everything which may be done is void—not voidable.

McClaughry vs. Deming, 186 U. S. 49;

Runkle vs. United States, 122 U. S. 543;

Dynes vs. Hoover, 61 U. S. at p. 81;

Mills vs. Martin, 19 Johns. (N.Y.) 7;

Smith vs. Shaw, 12 Johns. (N.Y.) 257.

[Endorsed]: Filed Apr. 6, 1942. [6]

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[Title of District Court and Cause.]

### ORDER TO SHOW CAUSE

The petition of the above-named Rufo C. Romero for a writ of habeas corpus coming before the court for consideration,

Now Therefore, it is Ordered as follows:

That P. J. Squier, Warden of the United States Penitentiary at McNeil Island, Washington, show cause in the above-entitled court at Tacoma, Washington, at eleven o'clock A. M. on Saturday, April 11, 1942, or as soon thereafter as the matter can be

heard, why the prayer of the petition should not be granted;

That the said Warden is required to bring the petitioner, Rufo C. Romero, personally before the court in connection with the hearing on this order to show cause;

That the Clerk forthwith mail or deliver to Rufo C. Romero, to P. J. Squier, Warden, to the petitioner's attorney, Pedro P. Semsem, and to the United States Attorney, each an uncertified copy of this order.

Dated April 9, 1942.

LLOYD L. BLACK

United States District Judge.

[Endorsed]: Filed Apr. 9, 1942. [7]

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In the United States District Court, Western District of Washington, Southern Division

### RECORD OF PROCEEDINGS:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 11th day of April, 1942, the Honorable Lloyd L. Black, United States District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court as follows:

Cause No. 370

[Title of Cause.]

## RECORD OF HEARING

On this 11th day of April, 1942, this matter comes on for hearing on order to show cause, directed to the Warden of the United States Penitentiary at McNeil Island, re Petition of Rufo C. Romero for a Writ of Habeas Corpus. The Petitioner is present, in custody, and by his attorney, Pedro P. Semsem; the respondent Warden appears by Oliver Malm, Assistant United States Attorney. On motion of Mr. Semsem he is permitted to appear in this court for the particular purpose of representing the Petitioner herein in this proceeding.

The Court directs the record to show as follows: Petitioner, being personally present in court, agrees that it is satisfactory to him for his counsel to have fifteen minutes' time for argument today in his presence and for the matter to be then continued in Seattle on April 16, 1942 at the hour of 1:00 P. M., for continuation of argument by counsel for the Petitioner and counsel for the Government without [8] the necessity of Petitioner's being present, he stating that it is agreeable to him that he remain in the penitentiary on April 16, 1942; that he also approves an arrangement whereby each side may submit written argument to the Court after the oral argument. Petitioner further states that this matter may be continued from time to time in his absence. Argument is had on Order to Show Cause. Peti-

tioner's Exhibit No. 1, being in two volumes, is marked for identification, and the matter is now passed to April 16, 1942 at 1:00 o'clock P.M., in Seattle.

A true copy.

Attest:

JUDSON W. SHORETT,  
Clerk

[Seal]      By E. REDMAYNE  
Deputy [9]

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[Title of District Court and Cause.]

DEMURRER

Comes now the respondent, through his attorneys J. Charles Dennis, United States Attorney, and Gerald Shucklin, Assistant United States Attorney, and demurs to petition of the applicant for writ of habeas corpus, on the ground as follows:

That the application does not state facts sufficient to constitute a cause for relief.

J. CHARLES DENNIS  
United States Attorney  
GERALD SHUCKLIN  
Assistant United States  
Attorney

[Endorsed]: Filed Apr. 16, 1942. [10]



In the United States District Court, Western District of Washington, Southern Division.

### RECORD OF PROCEEDINGS:

At a regular session of the United States District Court for the Western District of Washington, held at Seattle, in the Northern Division thereof, on the 16th day of April, 1942, the Honorable Lloyd L. Black, United States District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court, as follows:

Cause No. 370

[Title of Cause.]

### RECORD OF FURTHER HEARING

On this 16th day of April, 1942, this matter comes for further hearing, the Petitioner appearing by his attorney, Pedro P. Semsem, and the respondent Warden appearing by Assistant United States Attorney Gerald Shucklin, and further hearing being had the matter is now continued to April 20, 1942, at 11:00 o'clock A.M., at Seattle, for further hearing, at which time, it is directed by the Court, the Petitioner be present.

A True Copy.

Attest:

JUDSON W. SHORETT,

Clerk

[Seal) By E. REDMAYNE

Deputy [11]



[Title of District Court and Cause.]

## RESPONDENT'S NOTES ON THE RECORD.

Captain Rufo C. Romero, Philippine Scouts, 14th Engineers, was charged in the Philippine Islands with violation of the 96th Article of War before a general court martial convened at Fort William McKinley. Four specifications were charged comprising generally that the accused had access to secret maps pertaining to the national defense which he communicated to persons not entitled to receive such information; that he unlawfully reproduced certain official maps marked secret without obtaining permission from the commanding general; that he entered into a conspiracy to communicate the maps; and that he unlawfully reproduced certain official maps of military installations without first obtaining permission from the commanding general.

Approximately the first 198 pages of the record are devoted to advising the accused of the charge against him, inquiry into his mental condition, advising him as to his rights and entering his plea of not guilty to the charges.

It was stated by the Assistant Judge Advocate that the accused was present in court (R. 4) represented by defense counsel and assistant defense counsel. The accused was then asked if he desired to introduce individual counsel to which he answered in the affirmative. He was then asked if he desired to have regular defense counsel and assistant defense counsel sit as associates and collaborate with the

[12] civilian counsel, to which the accused answered no. He wanted the regular detailed officer to conduct the defense and the civilian defense to cooperate and act as associate counsel. He gave the name of his associate counsel as Benjamin C. DeGuzman.

The specifications against the accused are outlined on R. 7 and 8. The mental condition of the accused is inquired into beginning on R. 15. Associate counsel is mentioned R. 19, R. 36. The accused himself asked questions, (R. 81). Associate counsel's absence was noted (R. 119). The prosecution cited (R. 193) Title 50, U.S.C., Section 45, with the order of the President thereunder, Title 18, U.S.C. Section 88 and Title 50, U.S.C., Section 30. Paragraph 43(b), Philippine Department Regulations, refer as to who may reproduce secret maps. (R. 195, 196).

Provisions of army regulations 380-5, paragraph 4(c) and paragraph 8(g) were read as to dissemination of secret matter. Because of this provision all non-military people and civilian personnel withdrew, including associate counsel (R. 202). No objection was made by the defense. Associate counsel Benjamin C. DeGuzman returned to the courtroom. (R. 207). During all times between R. 202 and R. 207 defendant was present with defense counsel and assistant defense counsel. Associate counsel (R. 218) made an objection to evidence. The accused through defense counsel stated (R. 224) that there was a certain amount of antipathy against the assistant defense counsel by the accused and feels there is a certain amount of antipathy on the part of the de-

fense counsel. The assistant defense counsel Ivy was [13] excused. The president of the court-martial (R. 247) stated as follows: "The court takes notice of the fact that the associate defense counsel Benjamin C. DeGuzman has withdrawn from the case." No objection was made by the accused or his defense counsel. At all times during the proceedings the accused was represented by counsel. DeGuzman later appeared in the proceedings as hereinafter noted on behalf of two defense witnesses.

The first witness at the court-martial (Gepte, R. 214) testified he entered into business transaction with one Agbay and one Cabrera whereby he would purchase certain maps on behalf of a sultan of Lingayan Gulf. See Exhibit "A" attached. At first Agbay told him about the Japanese and that they could make some money. Gepte, a civilian employee of the Philippine Army, reported this to Major Evans of Military Intelligence. He was directed by Evans to inquire whether or not he could get a map of Corregidor. Gepte met Agbay and Cabrera, returned the map of Lingayan Gulf which he borrowed as a sample to show the sultan. He was informed by the men that the sultan was asking for too little. They could give him a map of the whole Philippines. They gave the witness a list of four maps and said the price would be 65,000 pesos (a peso is worth 50c). The witness said he would talk it over with the sultan. He told Agbay he had made the price 95,000 pesos. Agbay said for the witness to tell Cabrera that the sultan had made the price 45,000 pesos and

that he and the witness would split the 50,000 pesos.

These two men told witness that since this was the [14] finish of the business they wanted him to meet Captain Romero. Witness said he was willing to see Captain Romero anywhere but was afraid of him, being an officer. On October 15 Agbay took witness out to meet Captain Romero in front of the London Restaurant. They got in Captain Romero's car. Cabrero was also there. (R. 225). They all went to Captain Romero's house where they talked the matter over and Romero then told witness that they were going to Fort McKinley in order to make the maps. They had supper at Romero's house and went to Fort McKinley. (R. 226). Captain Romero, Cabrera and witness went into the building at Fort McKinley after Romero unlocked the door. Captain Romero instructed witness to hold flashlight while he opened the safe, using the combination. Romero pulled out several papers and told witness they were private documents showing him the mark on each paper "secret" (R. 228). He put the papers back in the safe. Then Romero unlocked a chest on the floor and got out a bundle of maps and they went to the darkroom. Cabrera put on the light. Romero explained to Cabrera and witness about defenses and plans. He remembers that one was of Corregidor. He also mentioned Maribeles and Bataan and others (R. 229). Romero told witness that since it would take two or three hours to do the mapping, it would be advisable for him

to make the maps at his house the next day. He said he would photograph them. Romero put the maps in the chest and locked the safe. Romero took a roll of paper and two bottles containing liquid with him. This was for the purpose of making photographs of the map of Fort McKinley (R. 230). [15] They went back to Romero's house, (R.230) and talked about the transaction. He said he was *he was* asking 65,000 pesos for the maps and suggested that the sultan raise his price and that if the sultan agreed that witness was to call Romero the next morning and say "Ramon, you can proceed to Pampanga". This the witness did the next morning and Romero told him to call him at 9:00 A.M. Romero told witness he was going to get the maps at 1:00 o'clock and that he would photograph them at his house (R. 233). Later that afternoon he met Romero at the latter's house, at which time Cabrera was present in the darkroom. They were there about an hour. Arrangements were made to come back at 4:30 at which time the sultan was to be present and delivery made of the negatives and that a corresponding amount of 50,000 pesos was to be paid. The witness then proceeded to Major Evans, Military Intelligence of the United States. The plans concerned the national defense (R. 256).

Captain Johnson (R. 267) testified to seeing Romero leave Fort McKinley with a bundle of papers under his arm. Major Evans (R. 270) testified that some 43 forgery maps and documents were found



in Romero's house; that Cabrera was present with the accused. Romero told Evans that heavy debts occurred from gambling losses was what impelled him to do what he did (R. 276). Major Evans did not make the raid. (R. 270). Captain Gabriel of the Philippine Constabulary testified he had a search warrant (R. 372) to enter Captain Romero's residence (R. 293, 295). Witness (R. 295) told Captain and Mrs. Romero that he had a search warrant and that it was necessary to inform them and to [16] read the contents to them. Both of them told witness there was no necessity to read the warrant and they allowed witness to conduct search of the house. The search warrant was returnable before the Justice of the Peace Court in Pasay (R. 297). On R. 297 a stipulation was entered into between the prosecution and defense that the search warrant authorizing search of the premises and the person of the accused at 100 Del Pan, Pasay, Rizal, Philippine Islands, on October 16, 1940, was issued and executed under competent authority of the laws of the Philippine Commonwealth (a copy of the search warrant is a part of the record in Volume 2, fifth from the last page).

Louis Alfonso (R. 306) member of the Philippine Constabulary, Pedro E. Flores (R. 310) member of the Philippine Constabulary, and Avelino Villafria, First Lieutenant of the Philippine Constabulary (R. 312) participated in the investigation.

Lt. Colonel Harland F. Seeley (R. 323) testified

that the maps (R. 333) were property of the United States and pertained to the National Defense. Other witnesses were Colonel H. A. Stickney (R. 340) and Lieutenant Page (R. 346).

Captain Gabriel testified that Gepte had operated with the Constabulary and with the Chief of the G-2 of the Philippine Army (R. 374).

Romero (R. 288) was for sometime suspected as a Japanese agent.

Ignatio Agbay (R. 403) and Gepte and Agbay (R. 427). Benjamin DeGuzman, who was acting as counsel for the witness acceded to the right of the witness (R. 408). His names appears on R. 431. He is referred to on R. 445, 448, 451, 455, 457, 460, 461, 463, 467. On R. 472 witness Agbay says [17] he will go on without his lawyer.

Cabrera testified for the defense. (R. 497). DeGuzman appeared as his attorney. He is mentioned on R. 516, 522. Romero took the stand on his own behalf (R. 551) and his rights were explained to him by the court.

The decision of the court-martial was delivered (R. 637) as follows: "To be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority may direct, for fifteen (15) years."

The sentence was confirmed by Franklin D. Roosevelt on July 5, 1941. Chief of Staff General

G. C. Marshall ordered confinement of the accused in the United States Penitentiary at McNeil Island, Washington.

Respectfully submitted,

J. CHARLES DENNIS

United States Attorney

GERALD SHUCKLIN

Assistant United States

Attorney [18]

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### EXHIBIT "A"

R. 215, 216—Testimony of Gepte.

"About ten days before October 15th, I met Mr. Ignacio Agbay, whom I know about two or three months ago, in the London Restaurant, Avenida Rizal, Manila. During our conversation, we mentioned a certain Lieutenant in the Philippine Constabulary. I told Mr. Agbay that I met the said Lieutenant in the races and saw him betting heavily. Mr. Agbay told me that since this man is but a mere Lieutenant, he is surprised to see him betting so heavily. I told Mr. Agbay that I don't suppose he is making anything criminal for having all this money, as I cannot tell whether he has any connection with another nation who might furnish him money. At this instance, Mr. Agbay told me about the Japanese. Then he told me if I would like to make money he said he has a plan that he would like to introduce to me, and



I told him that it sounds all right, so I invited him to a reserved room in the London Restaurant. When we were inside the room in the London Restaurant, he told me that there was a map which indicates the defense plan and maybe we could sell them at a good price. I told him that I have lots of friends who might buy them, but that I am not very sure. However, I will look for prospects. After awhile we change the topic of our conversation and we separated. Three days later, I went to the office of Mr. Agbay in the Assessment Department, City Hall, Manila. I told him that I have a prospect and it was a Sultan from Mindanao. I asked him for the map. He told me I must come to him at his house and he is going to intruduce me to the man who has the map."

[Endorsed]: Filed Apr. 16, 1942. [19]

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[Title of District Court and Cause.]

## ANSWER TO RESPONDENT'S MEMORANDA

The main argument embodied in pages 1 to 3 inclusive, and up to line 21 on page 4, seems to carry the contention that a writ of habeas corpus cannot be used in place of a writ of error. Petitioner does not challenge such contention but the principles therein stated must be construed and applied so as to preserve, not destroy, constitu-

tional safeguards of human life and liberty. The scope of inquiry in habeas corpus proceedings has been broadened, not narrowed, since the adoption of the 6th Amendment. Congress has expanded the rights of a petitioner for habeas corpus—28 U.S.C. ch. 14, sec. 451, *Johnson vs. Zerbst*, 304 U. S. 458.

Respondent, on line 25, page 4, contends that petitioner was never lacking counsel and that he was represented throughout the trial. As to that, petitioner says that it was not that type of representation as would fulfill the requirement of the 6th Amendment. When petitioner's associate counsel Benjamin DeGugman, a member of the Philippine bar, was excluded from the court room when the maps were about to be introduced and where his services were vitally needed, a circumstance was thereby created which precluded the giving of effective aid in the trial of the case; a circumstance, in the opinion of the United States Supreme Court in *Powell vs. Alabama*, 287 U. S. 45, as not in compliance of due process of law. When the relation of client and attorney exists the accused has the guaranteed [20] right of having counsel represent him at any, all and every stage of his case before the Court. The fact that petitioner was represented by an Army Officer who acted as counsel, does not abridge his right to have counsel of his own selection, and as many as he sees proper to employ to defend him. It could not be reasonably implied that the exclusion was waived since the order was given by the court

composed of Army officers, who believed in orders being carried out without question or hesitation in which objection would be of no avail. If the exclusion was supposedly to be in pursuance of certain Army regulation, your petitioner contends that such regulation would not be supreme enough as to override the Constitution of the United States. In *Jackson vs. State*, 115 S. W. 262, it was therein stated that exclusion from the court room of any of his counsel is clear invasion of his right notwithstanding the other counsel who remain are capable of taking care of his interests. For these reasons, petitioner contends that the case of *Johnson v. Zerbst* would apply in this case.

In *Powell vs. Alabama*, 287, U. S. 85, the defendants were represented by counsels appointed by the court in the preliminary hearing. No counsel prepared the case of the defense. And when the trial started, the court appointed all the members of the bar in that city, and about two lawyers agreed to participate for the defense. The Supreme Court ruled that the defendants were not given effective aid so as to make it a fair trial, and they were not represented by counsel within the meaning of the 6th Amendment.

Petitioner does not agree with the contention of the respondent that "if competent and material evidence was obtained by means of a valid search warrant, it matters not out of what court such warrant was issued". To this, petitioner disagrees, and contends that a police warrant is- [21] sued

by a justice of the peace may not be used as the basis of a Federal search and seizure. And it is not material that the search was successful in revealing evidence of a Federal Statute (Byars vs. United States, 273, U. S. 28).

Petitioner does not go into the merit of the case. His contentions are that his constitutional rights have been violated and the court martial had lost its jurisdiction as a result of such violation. The right of the court martial to proceed further is challenged. Petitioner also states that the court martial did not comply with the *staute* under which it was created. He does not here, bring out the manner of how should the court martial rule on the proceedings nor does he question the merits of the case. The case of Sanford vs. Robbins cited by Respondent does not apply in the present petition.

Respondent, in his notes on the Record seem to convey the guilt of the petitioner. While it is true that petitioner associated himself with the three persons named in the record when solicited about the maps, it is equally true that among petitioner's duties was the detection and apprehension of subversive activities. Many times before the present matter, he had arrested some individuals engaged in espionage activities. His sole purpose in associating with the persons named in the Record was his desire to arrest the supposed principal in the alleged transaction. He had arrested many Japanese suspects and turned them over to his

superiors, but no steps were taken to convict them. So when he was approached and told that a Filipino, a Moro, was willing to buy some maps, petitioner had made up his mind to apprehend the principal, thinking that Army authorities would then do something about the situation. Even then, maps [22] that were of no military importance were used to detect the supposed principal.

PEDRO P. SEMSEM

Attorney for Petitioner.

[Endorsed]: Filed Apr. 20, 1942. [23]

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[Title of District Court and Cause.]

### ANSWER

Comes now P. J. Squier, Warden of the United States Penitentiary, McNeil Island, Washington, by and through his attorneys J. Charles Dennis, United States Attorney for the Western District of Washington, and Gerald Shucklin, Assistant United States Attorney for said District, and makes answer to the petition of Rufo C. Romero for Writ of Habeas Corpus as follows:

#### I.

Denies Paragraphs II and IV of the petition.

Wherefore, having answered the petition, respondent prays that Writ of Habeas Corpus be denied.

J. CHARLES DENNIS

United States Attorney

GERALD SHUCKLIN

Assistant United States

Attorney

Copy received, Pedro P. Semsem.

[Endorsed]: Filed Apr. 20, 1942. [24]

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In the United States District Court, Western District of Washington, Southern Division.

#### RECORD OF PROCEEDINGS:

At a regular session of the United States District Court for the Western District of Washington, held at Seattle, in the Northern Division thereof, on the 20th day of April, 1942, the Honorable Lloyd L. Black, United States District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court, as follows:

Cause No. 370

[Title of Cause.]

#### RECORD OF FURTHER PROCEEDINGS

This matter comes on for further hearing on Order to Show Cause re Petition for Writ of Habeas Corpus and Demurrer of the Government



to said Petition, the Petitioner being present, in custody, and by his attorney, Pedro P. Semsem, and the respondent Warden appearing by Assistant United States Attorney Gerald Shucklin.

Government's Demurrer to the Petition is overruled and exception allowed.

On oral motion of Assistant United States Attorney Shucklin Victor D. Lawrence and Major Carroll are granted permission to be associate counsel on behalf of the Government.

On oral motion of Mr. Semsem, counsel for Petitioner, the transcript of the proceedings had at the Court Martial hearing is admitted as evidence in this case. [25]

Argument is presented and at 12 o'clock noon the hearing is continued to 1:00 o'clock P.M.

At 1:00 o'clock P.M. argument is resumed, in the presence of the Petitioner. At 1:30 P.M. argument is continued to 3:30 P.M. Respondent's Exhibit No. 1 (copy of Court Martial record of conviction and sentence), is admitted.

At 3:30 P.M. the matter comes on for further argument. Mr. Shucklin presents the original record of the Court Martial proceedings; the same is now admitted in evidence. Counsel for Petitioner now withdraws the two volumes of Petitioner's Exhibit No. 1, it being a duplicate copy of the record of the Court Martial hearing, and Petitioner's counsel advises the Court that when this matter is concluded, including the determination of any appeal taken by either side, there will be no ob-

jection on the part of the Petitioner or his counsel to the return of the transcript of the Court Martial hearing to the Judge Advocate General.

Further hearing is continued to April 27, 1942 at 3:00 o'clock P.M., at Tacoma, at which time the Petitioner and counsel are directed to be present.

A True Copy.

Attest:

JUDSON W. SHORETT,  
Clerk

[Seal] By E. REDMAYNE  
Deputy [26]

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In the United States District Court,  
For the Western District of Washington,  
Southern Division

#### RECORD OF PROCEEDINGS:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof, on the 27th day of April, 1942, the Honorable Lloyd L. Black, United States District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court, to-wit:



Cause No. 370

[Title of Cause.]

RECORD OF FURTHER HEARING

On this 27th day of April, 1942, this matter comes on for further hearing on Order to Show Cause re Petition for Writ of Habeas Corpus, the Petitioner being present in person, in custody, and by his attorney, Pedro P. Semsem, and the Government appearing by Assistant United States Attorney Gerald Shucklin. Further hearing is had. The Petition for Writ of Habeas Corpus is by the Court denied and the cause dismissed, to which ruling an exception is allowed. Written Findings of Fact, Conclusions of Law and Order are to be presented.

A True Copy.

Attest:

JUDSON W. SHORETT,

Clerk

[Seal] By E. REDMAYNE,  
Deputy [27]

[Title of Cause.]

ADDITIONAL POINT THAT PETITIONER  
WAS DENIED COUNSEL

Petitioner further states that he was denied the right to be represented by counsel in the preliminary hearings or investigation of the charges as shown in the following excerpt from his statement:

“Shortly before the investigation of the charges against me, I was permitted to see a lawyer—a certain Mr. Lynch—An American. At the investigation Mr. Lynch was not allowed to be present, and in answer to a letter of his, respectfully inquiring why he was denied attendance in spite of my request, he was told that it was not necessary that he be present. Mr. Lynch thereupon resigned as my counsel, remarking that the attitude of the military authorities was such that there was nothing he could do for me. My investigation was thus conducted without the benefit of counsel.”

Examination of the proceedings in the investigation charges as shown in the first few pages of the Record, shows that no counsel appeared for petitioner.

Respectfully submitted,

PEDRO P. SEMSEM,

Attorney for Petitioner.

[Endorsed]: Filed Apr. 24, 1942. [28]

United States District Court  
Western District of Washington  
Southern Division

No. 370 (Tacoma)

In the Matter of the Petition of Rufo C. Romero  
for a Writ of Habeas Corpus.

ORAL OPINION

Judge Lloyd L. Black, April 27, 1942.

The case of Rufo C. Romero is a very interesting one. It is interesting in its legal aspects. It is interesting in its human aspects.

The petitioner, Rufo C. Romero, was born in the Philippine Islands, was sent to and graduated from West Point Military Academy. He was an officer in the Army in the Philippines. He became entrusted with certain maps or access to certain maps by virtue of his service in the Army, his education and, I take it, his ability. My recollection of the record is that only a few days before his arrest he received his commission as Captain, having previously been First Lieutenant. The drama of the situation as established by later events after his arrest and court martial lies in the fact that some of the maps which he is charged with having conspired to divulge to unauthorized persons concern Corregidor, Bataan, Lingayen Gulf—names that for a while have been very important names, indeed, in the fast moving history of the world.

Rufo C. Romero is appearing today for the third time before this court. I am sure that he has made a good impression upon all those who have seen him. He has been courteous, dignified, when he spoke he was brief, and he [30] gave much indication on each occasion of being a man of superior abilities.

Shortly after his promotion to the Captaincy he was arrested, tried before a court martial, convicted, and he is now serving a sentence of fifteen years in the United States Penitentiary at McNeil Island. His attorney, Mr. Semsem, has come here from Washington, D. C. His presentation of the petition, the arguments he has made, both written and oral, indicate that he has made a very careful study of the record, of the Articles of War, and of the decisions he deemed applicable.

My understanding of the petition is that it is based on four grounds. Mr. Semsem's argument has supported such understanding. He has contended that the petitioner as a defendant before the court martial did not have a Constitutional trial and that therefore the court martial lost jurisdiction of him and of the offense charged for four reasons:

First—that maps obtained by a search warrant issued out of a civil court were introduced in evidence in the court martial although a Major Evans accompanied the civil authorities during the search.

Second—that the civilian attorney that petitioner

secured to represent him before the court martial was ejected from the court room during the course of the proceeding.

Third—that he was entrapped or induced by the government witness to violate the law and then arrested for doing what he was solicited to do.

Fourth—that the record is insufficient to sustain his conviction because it does not contain all of the maps.

Those are the four vital grounds, as I understand it, supporting the petition of Rufo C. Romero.

[31]

The record in the case has been introduced in evidence. The official record from the Judge Advocate General's Department was only received just before the close of the last day of hearing before me. It was then introduced in evidence. It contains considerably more than six hundred pages. Exhibits 2 to 18, inclusive, as I remember it, are now absent from the record. In addition to the four objections that I have mentioned, it is my understanding that Mr. Semsem now suggests that the record shows that during the investigation held prior to the court martial that the petitioner had no attorney.

As I indicated in a previous oral decision this afternoon involving a petition for a writ of habeas corpus the question before a judge in this type of a proceeding is not whether or no the petitioner was guilty of the charge of which he was convicted but whether or not the court had a right to say

“yes” or “no” to the question of the defendant’s guilt.

Even though I might believe Rufo C. Romero to have been absolutely guilty beyond a shadow of any doubt if I should be convinced that the Military court lost jurisdiction of his trial I would be obligated to release him. On the other hand, if I personally should be of the opinion that if I had been a member of the court martial that I would have voted to acquit still I would have no right to release him if I believed that he was given the kind of a trial which the Constitution and the law entitled him to have. In other words, a judge here in the State of Washington today cannot substitute his judgment as to the guilt or innocence of the petitioner in place of the judgment of the several members constituting a court martial at Fort McKinley in November, 1940. [32]

I have looked through this long record so far as it seemed to bear upon any of the questions raised and have had the advantage of frequent argument by counsel. I have refreshed my memory of the Articles of War and the principles of court martial.

First, as far as the search warrant is concerned, I may say counsel for the defendant and counsel for the prosecution stipulated before the court martial as to the legality of the search warrant and its execution. The then defendant, the now petitioner, was questioned by a member of the court as to whether or not he understood what that meant. He said he did.



As to the attorney being absent from the proceedings, the question before me is whether or not the record supports such contention. Under the Articles of War a defendant tried by a court martial is entitled to have either counsel from the Army or civilian counsel. He is entitled to have his civilian attorney act as chief counsel and to have such Military defense counsel as may be designated by the court act as associate counsel. In this particular instance the petitioner at the time of the trial was given permission to have civilian counsel. He was asked if he wished the Military defense counsel to act as associate counsel to his civilian counsel. He said he did not. He stated that he wished the Military counsel named by the government as provided by the Articles of War to conduct his defense and that he desired his civilian counsel to be merely associate counsel. It is pointed out by the Staff Adjutant, who reviewed the record, that there is some question whether or not Rufo C. Romero was entitled to have a Military counsel as a chief counsel and also to have civilian counsel as associate counsel. But anyway he was given both. The result is that he was given at least as much [33] counsel as he was entitled to and perhaps more than he could technically insist upon. Unquestionably, his civilian counsel was not intended by him to be active counsel. There was a very good reason for that. Very few lawyers in civilian life in their entire experience, regardless of how much active civil practice they



may have, ever learn anything about a court martial at all. Officers in the Army are usually far more skilled as to that than is the most experienced civilian counsel. The petitioner seemed to recognize this added experience of the Military counsel. His Military counsel was never excluded from the trial. There was a time when it was stated that there was to be certain evidence as to certain secret matter or that certain secret exhibits were to be offered. At that time the civilian members of the audience were excused and the civilian counsel—the associate counsel of then Captain Romero—was likewise excused. He made no objection. This petitioner made no objection. His Military counsel made no objection. In a relatively short period the civilian counsel returned. Thereafter, in a little while the civilian counsel withdrew from the case. The petitioner made no objection. His remaining counsel made no objection. The plain inference is that the petitioner found that the civilian counsel was of no help to him. That withdrawal was either with his consent or an expression of his desire. That the members of the court martial were willing for him to attend appears from the fact that this identical civilian attorney later returned to the trial to represent and advise witnesses who were trying to free the then defendant.

On the question of entrapment, I may say that there was a conflict of testimony. There was testimony that the defendant had been guilty of

violation with respect to Military [34] maps before the government secret service man appeared upon the scene. There was evidence that the defendant's witnesses and the defendant were conspiring. There was also evidence supporting the defendant's claim of entrapment. The court martial heard the evidence on both sides of this question. It watched and heard the witnesses testify. It had before it contradictory evidence under oath by one of the defendant's witnesses. In other words, one of the defendant's witnesses on the matter of entrapment swore one way one time and swore another way another time. The members of the court martial watching his expression when he attempted to explain why he told different stories on different days evidently were not convinced by what he said.

While not mentioned in the petition, it is suggested by Mr. Semsem, and asserted by the petitioner, that the petitioner had no attorney during the investigation which preceded the trial. During this investigation the defendant was given the names of the prosecution's expected witnesses. They were examined in his presence. He was allowed to cross examine them. Some written evidence was shown to him. In practically every instance he saw fit not to cross examine any witnesses at all. The only time he did so the cross examination was extremely brief. In other words, the investigation was a preview for his benefit. He was not hurt at all. No rights were denied him. He was given more of a privilege by that preview than he could

have expected had he been tried in any criminal court of which I know. Moreover, there is nothing in the Constitution, in the Articles of War, or in any law which requires that when you give a man advance notice of what the expected witnesses will testify against him that he must be accompanied by an attorney. But assuming he should [35] have had an attorney during the investigation, nevertheless he went through the entire court martial trial, so far as I can discover, without ever suggesting that he had desired any attorney at this investigation or that he felt that he was injured in the slightest by not having had an attorney there. The first it seems that he ever complained to anyone that he wished an attorney in 1940 was when he came into this court and told us here in 1942 that he desired an attorney back in 1940 before the trial started.

During the court martial Captain Romero did not take the stand. He could have been sworn as a witness. In such event he would have been subject to cross examination. He did not take the stand, did he, Mr. Semsem, as a witness?

Mr. Semsem: No, your Honor.

Judge Black: He made a statement, which is a privilege accorded in a Military court which is somewhat different than in ordinary civilian criminal procedure. The statement was in writing. That means that he had the privilege of studying what he would say. He was not under oath. He could not be cross examined. He did not have to run the hazard of embarrassing questions. He also came

into this court. He likewise read a written statement here. He did not take the stand. He did not subject himself here to cross examination, either.

As far as his not having had an attorney in 1940 at the investigation, the statement is made by him now in 1942 at a time when the government could not possibly have opportunity to prove the contrary, regardless of how true the contrary may have been. But certainly in 1942 he speaks too late as to not having had an attorney at an investigation in 1940. [36]

As to the search warrant I may say also that I am satisfied that the stipulation that was made and the lack of objection as to the search warrant at the time the evidence was introduced determine that question against him.

I am also satisfied that his failure to object when civilian counsel was excluded temporarily from the court martial during the production of matters that were asserted to be secret settles the question against him on that score.

The decisions are clear that a court such as this, long after the trial complained of, is not going to enter into the question of whether the court martial should have believed the defendant's witnesses to the effect that he was entrapped instead of believing the prosecution witnesses to the effect that he was a man in the midst of guilty conduct who was properly investigated. That was the function of the court martial.

The fourth question still remains before the court.

When I took the record to my chambers I felt it was a very substantial question. That was the question of whether or not the conviction could stand with the maps removed from the record. I have told counsel that there would always be a question of public policy as to whether the Military was required to publish its secrets to the world if it were to try by court martial one charged with secretly giving away such Military secrets. But the record of what actually happened at the court martial settles that question.

This court martial record is interesting for another reason than I have already mentioned. It is interesting because of the prominence of some of the signatures. The certificate is by Major General Myron C. Cramer, the Judge Advocate General. The signature in approval of General [37] Wainwright, of present Philippine fame, is found. The signature of the President of the United States confirming the sentence is in this record before me. The members of the court martial, General Wainwright, the reviewing board, the Judge Advocate General, and the President of the United States believe that the proceedings of the court martial were sufficiently adequate to sustain the decision. The record was reviewed by the Staff Judge Advocate, whose written view discloses that he made a very careful and intensive analysis of the testimony of the various witnesses and of the legal points involved.



The index states where the exhibits were introduced. It shows that on page 206 certain exhibits were introduced, and I will read what was there said. After mention of certain maps, Defense Counsel says this:

“If it please the court, the Defense would like to ask the Court if these maps are to be introduced as evidence.

“Trial Judge Advocate:” (He might be likened to the United States Attorney in this Court.) “The Judge Advocate does intend to introduce these maps as evidence.”

And this is his question:

“Was anyone authorized by you to communicate these maps or any other secret maps to Mariano Cabrera and Anis Y. Gepte?

“A. No, Sir.”

Then the words of the Trial Judge Advocate:

“Subject to objection by the Defense, the Prosecution desires to introduce in evidence the blueprint map marked ‘Exhibit No. One’ and maps marked: ‘Exhibits Numbers 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18.’ Exhibits 3 to 18, inclusive, are later to be withdrawn from the record due to their secret contents. Additional copies of the blueprint which is marked ‘Exhibit No. One’ are available for the examination of the Court.

“Law Member: Does the Defense Counsel desire to examine any of these maps? [38]

“Defense Counsel: The Defense Counsel has

examined these maps and has no objection to their introduction.”

Now that statement by his own counsel was made in the presence of the then defendant just a few moments after the Judge Advocate General had said this:

“Exhibits 3 to 18, inclusive, are later to be withdrawn from the record due to their secret contents.”

Exhibit 2, according to the index, is introduced on page 313. I therefore turn to page 313.

“Q. I hand you this item, marked Exhibit 2. (Handing Exhibit 2 to witness) What is it?

“A. (Examining Exhibit 2) This is one of the maps I found in the house of Mariano Cabrera, a restricted map of Lingayen.

“Prosecution: The prosecution offers in evidence, subject to objection by the defense, Exhibit #2, to be withdrawn at the end of the trial.

“President: There being no objection, Exhibit #2 will be accepted in evidence.”

This offer of Exhibit No. 2 with the provision that it should be withdrawn at the end of the trial appears in the record about one hundred pages later than the place in the record which shows the admission of Exhibits 3 to 18 after being offered in evidence with the provision that they were later to be withdrawn because secret and after defense counsel had stated they had examined those maps (Exhibits



3 to 18) and had no objection to their admission.

What actually occurred at the trial of this petitioner in 1940 is far more important than what some opinion may say about an entirely different circumstance in a different trial. I am satisfied that no courts have held that one may consent to maps being withdrawn at the end of the trial, directly or inferentially, and nevertheless thereafter successfully complain about such withdrawal. A very interesting question [39] would have been presented if the defendant at the time of admission had objected to a later withdrawal of these maps. This court would then be required to decide whether the Army was so deprived of the right to protect its secrets that it would have to allow anyone charged with being a conspiring traitor to go scott free or publish the things that he was charged with attempting to betray. But that question is not before me. There was no objection at all.

I do not, of course, know whether the then Captain Romero was actually guilty or not of the offense charged. He knows. An examination of the record, however, has surprised me with the extraordinary care that the court martial took to accord the defendant a fair trial. No short trial can be conducted without some mistake being made. I do not think anyone would contend that any court could go through a trial producing a record as large as this without making some ruling concerning which some other court might have a different view. I doubt that many trials indicate any more desire to give the

defendant a fair trial than this record indicates. I am not unmindful of the fact that the defendant has in his statement advised this court that the maps were of absolutely no importance and were of the kind that were used for wrapping paper. Whether they were important or not were questions for the court martial. They are military men. They would know much more about that than in the Philippines than I, thousands of miles away, would know now. The undisputed evidence, as I read it, shows that they were regularly kept in a locked receptacle and shows that the defendant took the trouble to photograph them. The members of the court martial may not have been very much impressed by a contention that a Captain of the ability of this Captain and of his education would photograph wrapping paper. [40]

The petitioner has also urged that because he was a Filipino he was not given a fair trial. Doctor Lazatin, a Filipino, testified that the defendant's wife had attempted to induce him, because he was a friend of the defendant, to perjure himself. This Filipino doctor stated that because he was a Filipino he was "ashamed to mix with this case; besides that I cannot betray my country testifying to what is not true." Such indicates the attitude of the patriotic Filipinos.

The American people have a very high regard for the people of the Philippine Commonwealth. That they should have a high regard for them is demonstrated by the very brave fight the Filipinos have

been putting up against great odds. The forces of the Philippines have demonstrated a willingness to fight for liberty such as many peoples of Asia have not shown.

The West Point education of the petitioner a number of years ago and his promotion, as well as the entrusting to him of the Army secrets would indicate that the Army personnel also has consistently had a high regard for the people of the Philippine Islands.

These later comments of mine have no vital part in the decision. If I felt that the defendant were innocent but also believed that trial requirements had been complied with I would still be compelled to dismiss his petition now. I am satisfied that the requirements were complied with. I think anyone reading the record impartially would come to the conclusion that it is not surprising at all that the then defendant was found guilty. If actually he were not guilty it is very tragic and unfortunate that he chose to put himself in the position where the circumstances seemed so strong against him. Mr. Semsem has most ably presented the contentions of his client. He was confronted with the obstacles [41] of what the record actually disclosed. If the petitioner had a civilian attorney and no other counsel and if such civilian counsel had been excluded for a while from the proceedings Mr. Semsem would have had a very much more favorable case. Likewise, if the then defendant had objected to the proviso that the maps were to be later re-

moved Mr. Semsem would have had very much more of an opportunity now to get the result he seeks. I think I have covered all the matters presented to me.

The petition is denied and dismissed. Mr. Semsem?

Mr. Semsem: Your Honor, I would like to have an appeal noted.

Judge Black: All right, you may have an exception to the ruling, and of course, will be given an opportunity to appeal.

Mr. Shucklin: Would it be possible to have Your Honor's remarks transcribed so that we could prepare findings?

Judge Black: I had not made my remarks with the idea that they would be transcribed. This is an oral opinion. The language of it is, of course, probably not as apt on many questions as it ought to be. I have not cited cases because I felt the facts differentiated this situation from any of the cases mentioned by counsel on either side. I know of no case that was at all like this.

Mr. Shucklin: I know that Mr. Semsem wants to get back to Washington, D. C. and I was just wondering whether or not we should prepare findings before he leaves.

Judge Black: Mr. Semsem has waited quite a while. The importance of this question would have justified a written decision. I did not get this official record until just the other day. I gave an oral decision so that he might have the privilege of going east. You may send him the findings which [41a] you prepare. He may mail such objections as he

has. The findings should not be entered until he has an opportunity to protect the record for his appeal. I do not see why Mr. Semsem should not proceed east. He stated in open court the other day that he was willing for me to announce my decision after he left but I did think it was preferable to have him present.

Mr. Semsem: I am willing to file my notice of appeal before I leave.

Judge Black: I rather doubt the advisability of that before the findings are signed. I think such would be premature. It would be my guess that the safe plan for you to follow is to give notice of your appeal after the court has signed the order or judgment of dismissal. If you think differently you should, of course, follow your own judgment. But I think waiting to appeal until I sign the dismissal is the safer plan for you. Certainly, I will not sign any dismissal until I am satisfied you have been notified of the time it is going to be presented so you can speedily present any notice of appeal.

Mr. Semsem: I will send my notice of appeal when the dismissal then is signed.

[Endorsed]: Filed May 2, 1942. [42]

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In the United States District Court, Western District of Washington, Southern Division.

#### RECORD OF PROCEEDINGS:

At a regular session of the United States District Court for the Western District of Washington, held



at Seattle, in the Northern Division thereof, on the 12th day of June, 1942, the Honorable Lloyd L. Black, U. S. District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court, to-wit:

Cause No. 370

[Title of Cause.]

### RECORD OF PROCEEDINGS.

On this 12th day of June, 1942, Findings of Fact and Conclusions of Law and Order of Dismissal are presented to the Court by Gerald Shucklin, Assistant United States Attorney, and the said Findings of Fact and Conclusions of Law and Order of Dismissal are at this time signed by the Honorable Judge Lloyd L. Black.

A True Copy:

Attest:

JUDSON W. SHORETT,  
Clerk.

[Seal] By E. REDMAYNE,  
Deputy. [43]

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[Title of District Court and Cause.]

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above matter coming on regularly before the Court, the petitioner herein having been represented

by Pedro P. Semsem, and the respondent, P. J. Squier, Warden of the United States Penitentiary on McNeil Island having been represented by his attorneys, J. Charles Dennis, United States Attorney, and Gerald Shucklin and Oliver Malm, Assistant United States Attorneys, and the Court having heard and considered the testimony herein and having heard and considered the arguments of the counsel for the respective parties, now makes the following

## FINDINGS OF FACT

### I.

That on October 30, 1940 the petitioner was charged with violation of the 96th Article of War, before a general court martial which was convened at Fort William McKinley, Philippine Islands, under four specifications of conspiracy to unlawfully communicate certain maps marked "Secret" to certain persons not entitled to receive such information, and unlawfully reproduce certain maps marked "Secret". That the petitioner entered a plea of not guilty to said accusations and was tried before the said general court martial, and was later found guilty thereunder and on November 25, 1940 was sentenced to serve fifteen years at hard labor. That said sentence was later confirmed by the President of the United States on July 5, 1941 and that the place of petitioner's [44] confinement was directed by General G. C. Marshall, on July 8, 1941 to be the United States Penitentiary at McNeil Island, Washington.



## II.

That at all times during said trial the petitioner was represented by counsel of his own choosing; that at the petitioner's request, he was represented there by military counsel as his chief counsel and by civil counsel as his associate counsel. That associate defense counsel for the petitioner was absent during a portion of the said trial proceedings, without objection being made by petitioner or his other defense counsel; that the petitioner's military counsel was at no time excluded from said trial.

## III.

That certain evidence obtained under a search warrant issued by the Justice of the Peace of the town of Pasay, Province of Rizal, Philippine Islands, was introduced at the said trial without objection being made thereto by the petitioner or his defense counsel; that at the said trial counsel for the prosecution and the defense stipulated that said search warrant was legal, and petitioner in the record stated he understood that stipulation.

## IV.

That, whereas petitioner has here asserted that he was entrapped and induced by Government witnesses to violate the law and was arrested for doing what he was solicited by them to do; there was a conflict of evidence introduced in the trial before the court martial upon the question of entrapment, which question was there resolved against the petitioner. [45]

## V.

That, whereas petition has here asserted that the record of the proceedings before said court martial was and is insufficient for the reason that it does not contain exhibits II to XVIII thereof, that is, certain maps, when said maps were introduced counsel for the prosecution specifically stated that said exhibits were secret maps and were to be later withdrawn from the record, and defense counsel neither objected to the introduction of said exhibits, nor objected for the reason that they were later to be withdrawn.

From the foregoing Findings of Fact the Court now makes the following

## CONCLUSIONS OF LAW

## I.

That the petitioner received a just and fair trial before the general court martial; that said general court martial had jurisdiction of the petitioner and of the offenses there charged against him and had jurisdiction to impose said sentence of imprisonment upon the petitioner, and that said sentence was and is in all respects valid and binding, and petitioner is not now unlawfully restrained and detained by the respondent.

## II.

That petitioner was not denied the right to be represented in said court martial trial by counsel of his own choosing, and that petitioner's constitutional rights were in no manner violated in said court martial trial.

## III.

That petitioner has failed to establish grounds

upon which he is now entitled to be released from his present confinement at the United States Penitentiary at McNeil [46] Island, Washington, and that his petition for writ of habeas corpus and release from confinement should be denied.

Done In Open Court this 12th day of June, 1942.

LLOYD L. BLACK,

United States District Judge.

Presented by:

OLIVER MALM

GERALD SHUCKLIN,

Asst. U. S. Attorney.

Copy received and approved as to form this 25th day of May, 1942.

PEDRO S. SEMSEM,

Attorney for Petitioner.

[Endorsed]: Filed June 13, 1942. [47]

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[Title of District Court and Cause.]

### ORDER OF DISMISSAL

The above entitled matter coming on regularly to be heard upon motion of the counsel for the respondent, petitioner being represented herein by Pedro Semsem and respondent being represented by his attorneys, J. Charles Dennis and Gerald Shucklin and Oliver Malm, Assistant United States Attorneys and the Court having heretofore made and entered its findings of fact and conclusions of law herein, in accordance therewith, it is now hereby

Ordered that the petition of the petitioner herein by and the same is hereby denied; that the above entitled action be and the same is hereby dismissed, and it is further

Ordered that the petitioner is remanded to the custody of the respondent, P. J. Squier, Warden of the United States Penitentiary at McNeil Island, to complete the service of the sentence imposed upon him by the general court martial at Fort William McKinley, Philippine Islands, as later approved.

Done In Open Court this 12th day of June, 1942.

LLOYD L. BLACK,

United States District Judge.

Presented by:

OLIVER MALM,

GERALD SHUCKLIN,

Asst. U. S. Attorney.

Copy received and approved as to form this 25th day of May, 1942.

PEDRO P. SEMSEM,

Attorney for Petitioner.

[Endorsed]: Filed June 13, 1942. [48]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Rufo C. Romero, petitioner above-named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment entered in this petition on ..... 1942.

Dated ..... 1942.

(Signed)

PEDRO P. SEMSEM,

Attorney for Petitioner.

Copy delivered to U. S. Attorney, Tacoma, Wash.  
June 15, 1942.

E. REDMAYNE, Dep. Clerk.

[Endorsed]: Filed June 15, 1942. [49]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO TRANSCRIPT  
OF RECORD

United States of America,  
Western District of Washington,  
Southern Division—ss.

I, Judson W. Shorett, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify and return that the foregoing Transcript of the Record on Appeal, consisting of pages numbered 1 to 58, inclusive, is a full, true and correct copy of so much of the record, papers and proceedings in Cause No. 370, entitled In the Matter of the Petition of Rufo C. Romero for a writ of Habeas Corpus, as required by Designation, and Supplemental Designation of Petitioner-Appellant and Supplemental Designation of Respondent-Appellee, on file and of record in my office at Tacoma, Washington, the same constituting the Transcript of the Record on Appeal from the Judgment of the District Court of the United States for the Western District of Washington, Southern Division, to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that Petitioner-Appellant's original Statement of Points and the original Court Martial proceedings are transmitted herewith.

I do further certify that the following is a full, true and correct statement of all expenses, fees and charges earned by me in the preparation and certifi-

cation of the said Transcript of the Record on Appeal, to-wit: [49]

Clerk's fee for preparing, comparing and certifying Petitioner - Appellant's portion of the Transcript on Appeal.....	\$6.05
Appeal fee .....	5.00
	<hr/>
	\$11.05

I further certify that the said fees, above set forth, have been paid in full by attorney for said Petitioner-Appellant.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, in the City of Tacoma, in the Western District of Washington, this 17th day of August, 1942.

[Seal] JUDSON W. SHORETT,  
Clerk.

By E. REDMAYNE,  
Deputy. [50]

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TRANSCRIPT OF COURT MARTIAL  
RECORD  
REVIEW OF THE STAFF JUDGE  
ADVOCATE

Staff Judge Advocate, Hq. Phil. Div., Fort William McKinley, P.I., January 11, 1941. To: The Commanding General, Hq. Phil. Div., Fort William McKinley, P.I.



1. The Record of Trial by General Court-Martial of the following named accused having been referred to me under the provisions of the 46th Article of War before action thereon by the reviewing authority, I submit herewith my review, with opinion and recommendation and reasons therefor, as required by paragraph 87*b* of the Manual for Courts-Martial.

2. Synopsis of the Record.

Romero, Rufo C., 018350, Captain, Philippine Scouts (CE), 14th Engineers (PS).

Tried at Fort William McKinley on November 25, 1940. Days awaiting trial: 40 (In confinement).

Age (nearest birthday): 33 years.

Appointed from: Philippine Islands.

Length of service: 9 7/12 years.

Previous convictions: None.

CHARGES

Violation of A. W. No. 96	Gist of Offense	Pleas Not Guilty	Findings Guilty
Sp. 1:	Communicating secret maps pertaining to national defense to persons not entitled to receive such information.	Not Guilty	Guilty
Sp. 2:	Reproducing uncensored "SECRET" maps of military installations without authority.	Not Guilty	Guilty
Sp. 3:	Conspiring to communicate secret maps pertaining to national defense.	Not Guilty	Guilty
Sp. 4:	Conspiring to reproduce uncensored "SECRET" maps of military installations without authority.	Not Guilty	Guilty



Sentence: "To be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority may direct, for fifteen (15) years".

Maximum Punishment: In the discretion of the Court (A.W. 96).

3. Inquiry Into the Sanity of the Accused.—After arraignment, the defense made a motion that the court conduct an inquiry into the mental condition of the accused, with a view to determining whether or not the accused was competent to conduct or cooperate intelligently in his defense, and with respect to the offenses charged against him, whether or not at the time it is alleged the offenses were committed, he was able, concerning the particular acts charged, both to distinguish right from wrong and to adhere to the right (R. 11). The court having determined upon such an inquiry, the following evidence was offered:

a. Evidence.

(1) For the Defense.—The testimony of an older sister of the accused who took care of him in childhood establishes that as a child accused was "hot-tempered". When he was seven years old he had malaria. During his illness which lasted about six weeks he would shout very loud at night stating that he was frightened. Once he shouted and ran. When witness tried to catch him, he fell on the stairs (R. 24). He was unconscious and

bleeding from the head and nose. He was under medical care for about eight months. Although he sometimes shouted in his sleep, from that time witness noticed accused was all right. On one occasion, apparently about the same time, he poured a bottle of kerosene on the floor of the house and lighted it with a match. On another occasion he beat a boy who refused to go with him to get a cow. Four or five years ago accused threatened to shoot a man who remarked that accused was very fat. Accused had a caliber .45 pistol in his hand at the time. The man did not take the matter into court because witness told him accused was mentally unbalanced (R. 25, 26). (Upon examination by the court, witness testified that the incident in which accused threatened to shoot a man "was investigated by Major McKenzie at Camp Stotsenburg" (R. 38), and that the man dropped the case after witness told him accused was not really serious, and that he had a habit of being immediately hot-tempered at times (R. 39)). During the month of August, presumably of the present year, when witness failed to bring a brother from Capas to Manila accused walked along the roadway shouting for his brother (R. 30). In conversations with witness, accused become very angry and called her names (R. 30, 31). Because of his actions, a brother of the accused consulted a medical officer, who advised consulting a specialist (R. 31).

The housegirl of the accused, in his employ for

eighteen (18) days prior to his arrest, testified that every time the telephone rang, accused ran downstairs and hid in the dark room; when something did not please him at the dinner table he threw food and dishes on the floor; he beat his children without cause and scolded them (R. 40), after which he would cry. Accused rolled on the floor and always talked to himself. Witness thought accused was "crazy" (R. 41). In taking his bath, accused kept his pajamas or shirt on, and then proceeded to his room with wet clothes (R. 41, 42, 43). He would call to witness for dry clothes and when these were given to him, he would throw them back, bang the door and shout "God *dam*" or "God *dam* it" (R. 41, 42, 45). On one occasion accused scolded and shouted at his wife just as she was about to go out. When witness saw the wife upstairs later her clothes and hair were in a dishevelled condition and her left arm was sprained (R. 48).

Another housegirl in accused's employ for a month and a half, about October, 1940, testified that after beating his children, he would run downstairs and shout (R. 56). In other respects the testimony is similar to that of the previous witness.

Wife of the accused testified as to certain acts of uncivility, of wilfulness, of cruelty and obscenity, on the part of the accused (R. 62, 64, 66, 67), as well as peculiar behavior at certain times, described as "tantrums" and "fits" (R. 62, 64, 67). The accused showed fear of the telephone especially

within the few months preceding trial, and got worse after witnesses informed accused that G-2 was after him and the Constabulary was watching him (R. 68). Also, during this period, people were calling accused attempting to collect debts (R. 70). Witness never thought to go to Army medical authorities with a view to determining accused's mental condition, as he would be sane for months at a time, but did talk to Mariano Lazatin, a civilian doctor, about the accused, the last time about three months prior to trial, and this doctor said accused was "crazy" (R. 73, 85). Several months previous accused insulted Major Guevara by hanging up the receiver on the telephone while conversing with Major Guevara (R. 81, 82).

(2) For the Prosecution.—Doctor Mariano Lazatin testified that on the morning of November 7th, Mrs. Romero called at his office and asked witness to testify that he had treated accused about four or five months previous, when as a matter of fact the doctor had never treated the accused (R. 94-97, 110). Witness was a townmate of accused and knew him for two or three months before accused left for the United States, about eighteen years ago, and also subsequent to his return from the United States but never noticed any signs of insanity, or abnormality (R. 95, 96, 111). The wife of the accused never spoke to witness or consulted him about her husband's mental condition (R. 99, 110), but a month previous to her last visit she brought a check for twenty

pesos to witness and asked him to cash it which he did (R. 100). The check was returned the following day by the bank and witness turned it over to his attorney (R. 100, 101). The accused later left twenty pesos and a note stating he was angry for the action taken but witness did not get angry with accused (R. 102, 103).

Upon recall for further cross-examination, Mrs. Romero testified that she saw Doctor Lazatin the day before and "asked him come \* \* \* and asked him if he would remember the things he told me and he repeated them to me \* \* \*". Witness saw Doctor Lazatin after she talked to him three months before, but did not talk about accused at all (R. 113).

Colonel Stickney, Corps of Engineers, under whose command accused served for about one year, testified that he had been in contact with accused for three or four years prior to July, and had had three or four sketchy contacts with him since July (R. 120). Accused never showed any signs of abnormality or insanity, or came to his attention in that regard. In his opinion, the accused was sane and knew the difference between right and wrong up to the time he last saw him, about June 1st. (R. 121). Accused was investigated several times, chiefly on matters involving debts, and in one instance about a quarrel with a retired soldier (R. 123). Accused showed no abhorrence for answering the telephone while he was on duty in witness' headquarters (R. 124). At the suggestion of the



witness, the wife of the accused once came to his quarters relative to financing her trip home from a fund available to a group of ladies, after hearing rumors that the wife had left the accused. The wife of the accused stated that although she wanted to go home, she was afraid to take any steps to go home because she was afraid of physical violence (R. 127, 131).

Lieutenant Colonel Skerry, commanding officer of the accused, who had known him for a very short time, saw him for ten minutes on October 15th during an inspection by the Department Inspector General. Accused reported to the inspector in a military manner, and answered questions of the Inspector accurately, and exceedingly well. He was calm, keen and very collected. He appeared to be normal (R. 132-134). Witness again saw accused on morning of October 16th, at which time he told him he was to be assigned to duty as Topographical officer. Accused was in complete possession of his faculties (R. 134). Witness gave the accused permission to absent himself the entire day to clear up his debts. Shortly after giving such permission the accused reported that unless he were made Assistant to the Division Engineer he could not handle the secret maps. Witness informed him he did not plan to make him Assistant to the Division Engineer (R. 135).

Major Evans, whose only contact with the accused occurred on October 16th, when he saw him for about three hours, testified that on that occa-



sion he had opportunity to observe him closely. He took him into custody in the name of the Commanding General. The accused reacted normally under the circumstances (R. 141). After being warned of his rights by Colonel Baehr, who, at the time of the trial was not available as a witness, witness heard accused state, among other things, that his trouble was all due to becoming heavily indebted through gambling (R. 143). His remarks at this time clearly indicated to the witness that he knew the difference between right and wrong (R. 142). Accused exhibited definite agitation, but his remarks were coherent (R. 145). Witness granted a request of the accused, made after his arrest, that he be not left in the house where his children, upon their return, would see him, and permitted him to enter witness' car (R. 146). On the way to Fort McKinley, accused asked witness to permit him to attempt to escape so witness could shoot him, because he would be better off dead (R. 145, 146).

Lieutenant Colonel Seeley testified that he had frequent official contact with the accused during the preceding three years. Accused's conduct and his use of the telephone in witness' presence were normal (R. 148, 149). In his opinion the accused knew the difference between right and wrong in his official business (R. 150, 151).

Lieutenant Page, 14th Engineers, who knew accused since October, 1938, and had official contact with him since March, 1940, testified that he had

never seen the accused exhibit any characteristics which could be classified as abnormal. Witness saw the accused answer the telephone but never saw him exhibit any emotion or fear in answering the telephone. He never saw accused in a fit (R. 152, 153, 155). As adjutant of the 14th Engineers, the accused came to his attention officially on accused's private financial affairs, but not with regard to his relations with members of his family (R. 157, 158).

Major Manzano, who knew accused intimately for previous six years and was officially associated with him for four years (R. 159), testified that on one occasion about October 8th or 9th, after witness had secured shelter for Mrs. Romero at the home of witness' sister, partly due to apprehension for her safety, the accused called on him to find out the whereabouts of his (accused's) wife, who had left and taken all the money necessary to pay his official bills. Accused threatened to commit suicide and to wipe out his whole family if necessary if he could not locate Mrs. Romero that night (R. 163, 166, 168), and also threatened to kill anybody that he felt was hiding his wife. At the time, the accused showed witness a box containing a white powder, claiming it was cyanide (R. 166). From his contact with the accused, he did not believe accused to be insane (R. 164). During his relationship with accused, the latter reacted slightly more violently during periods of stress and strain than the average person (R. 170).

Major Cowles, who knew accused very well for preceding two and one half years, and who investigated the charges against the accused, testified that during the investigation lasting from October 20th to about October 30th accused was present in his office every morning and under his observation for a period of twelve to fifteen hours. The accused was aware of the proceedings taking place, appeared to follow intelligently the course of the investigation, whenever he desired to do so, but manifested an attitude of indifference throughout the investigation. Witness believes accused was sane and knew the difference between right and wrong (R. 170-172).

Major Glattly, Medical Corps, registrar of the hospital at Fort William McKinley, testified that the official records of the accused covering the period October 21, 1931 to October 28, 1939, did not indicate that the accused had ever been reported as having any form of insanity (R. 174, 175). The records in question show observations for short periods of time, none of which, however, were sufficient to determine the presence or absence of mental disorders (R. 176).

b. Additional Evidence.—The Court having decided adversely to the accused on the issue of sanity based upon the foregoing evidence, the defense, during the trial, offered to adduce further evidence relative to the accused's mental condition (R. 426), and toward the close of the session on November 20, 1940, presented a witness as to the mental

condition of the accused with a request that the question of sanity be reopened (R. 532). The court having determined upon a further inquiry the following additional testimony was offered toward the conclusion of the trial:

(1) For the defense.—Doctor Antonio Vasco, a general practitioner, who knew accused a long time and his family very well, testified that he observed the accused on two occasions for a total period of about one hour and ten minutes (R. 589, 594, 595, 603). Upon the first occasion, he went to observe the accused at the instance of his brother. He asked accused “How are you?” and accused answered him in a loose manner and told him he was disgusted with his family. Witness did not want to mix himself up because he thought it was a family matter. One day accused came to witness’ house. While they were talking, accused, without justifiable cause, left without saying good-bye and that attitude struck the witness as strange (R. 590, 591, 595). As a result of these personal observations of the accused witness believed accused suffers a mental deficiency or mental alteration (R. 590, 594). He believed there were moments when accused could not distinguish right from wrong and there are times accused is capable of adhering to the right (R. 594). Witness made no psychiatric examination and was merely stating his superficial observations. Witness would not state it as his positive opinion that accused was suffering from mental deficiency (R. 602).

(2) For the Prosecution.—Captain Ernest H. Parsons, Medical Corps, after being qualified before the court as a psychiatrist, testified as follows: He met the accused twenty months ago and saw him on half a dozen occasions. On one of these he had a meal or two with him and talked to him casually for some moments at each meal (R. 608). As a result of his observations he could not render an opinion as to the mental deficiency or the mental health of the accused (R. 609). However, as the accused was a graduate of the United States Military Academy, and assigned to the Corps of Engineers witness was of the opinion he could not be a mental defective. As to his mental health it would take witness at least thirty days to render an opinion (R. 609). Five or six hours would be necessary to diagnose mental deficiency (R. 609, 610). This could not be done by talk and observation but requires one of the well standardized tests, such as the “I.Q.” or Army “Alpha” and “Beta” tests (R. 610). True psychoses are not consistently normal every morning and frequently abnormal after work hours. Psychotic cases do, however, become more evident under stress, such as performing military duties or other arduous work, than during periods of rest (R. 616).

c. Findings.—Upon the conclusion of the evidence in 3a, above, the court decided adversely to a ruling of the law member that the court should adjourn for the purpose of making a report in pursuance of paragraphs 63 and 35c of the Manual



for Courts-Martial, and found that the accused was competent to conduct or cooperate intelligently in his defense, and with respect to the offenses charged against him, at the time these alleged offenses were committed, he was able concerning the particular acts charged, both to distinguish right from wrong and to adhere to the right (R. 184, 186).

Upon conclusion of the evidence in paragraph 3b, above, the court found that the accused was free from mental defect, mental disease or mental derangement at the time of the commission of the alleged offenses; that he was able concerning the particular acts charged both to distinguish right from wrong, and to adhere to the right, that he was at the time of this finding free from mental disease and mental derangement; and that he was able to cooperate intelligently with his counsel in his defense (R. 617).

d. Opinion.—In my opinion the action of the court in not sustaining the ruling of the law member referred to in 3c, above, was proper, and the findings of the court are legally sustained by the evidence. The report referred to by the law member is not mandatory but is left to the discretion of the court (par. 65, M.C.M.). The testimony of the witnesses for the defense shows that both as a child and as an adult the accused was quick-tempered and insisted upon having his own way, especially with those in his home, or those of inferior station (R. 24, 37, 40, 62). All of the acts of the accused relied upon by the defense as



showing that the accused was insane, and not otherwise explained, may be attributed to these traits of the accused's character. There is, however, nothing in the evidence to indicate that this disorder of personality amounted to insanity or prevented the accused from both knowing the difference between right and wrong and adhering to the right. On the contrary, the testimony of witnesses for the prosecution shows that when the accused came in contact with those upon whom he could not impose his will, he was capable of exercising self-restraint, and that during such periods knew the difference between right and wrong and could adhere to the right. Captain Parsons testified that true psychoses are not thus consistently normal in the morning and abnormal after work hours (R. 616).

Moreover, during the period of about fourteen days covering the trial of the case the accused was under the observation of the court for approximately sixty hours. In addition to making an unsworn statement, he actively and intelligently cooperated in his defense on many occasions, both during the inquiry into his sanity and during the trial on the general issue (R. 81, 102, 114, 259, 297). Professor Wigmore commenting upon this type of evidence states as follows:

“ ‘To a rational man of perfect organization’, said a Kentucky judge just a century ago, ‘the best and highest proof of which any fact is susceptible is the evidence of his own

senses. Hence autopsy, or the evidence of one's own senses furnishes the strongest probability and indeed the only indubitable certainty of the existence of any sensible fact.' The advantage of this proceeding—the tribunal's own view of a thing shown to it, or autoptic proference, as we may now call it—is that the tribunal is saved from having to cogitate over the possible inferences from circumstantial evidence \* \* \* or from testimonial assertions \* \* \*. (Wigmore on Evidence (Students' Textbook, 1935) sec.206).

In view of the foregoing I am of the opinion that the evidence establishes the mental responsibility of the accused beyond a reasonable doubt, and that consequently the court was justified in its findings on this issue.

#### 4. General Issue.

##### a. Evidence.

(1) For the Prosecution.—The substance of the evidence for the prosecution establishes that on October 15th and 16th 1940, the accused, a Captain in the 14th Engineers, was, among other duties, Assistant to the Division Engineer, having automatically resumed this duty on his return from leave October 15th. He was originally assigned to this duty in July, 1939, by authority of Division Headquarters. As Assistant to the Division Engineer he was custodian of secret maps and documents in possession of the 14th Engineers and

therefore charged with accountability of all secret documents and maps issued by the Department Engineer to the Division Engineer as a Special Staff Officer of the Division (R. 199, 200, 347). Under regulations in effect on October 12, 1940, and received by the Division Engineer on October 16, 1940, the Commanding General, Philippine Division, was the person to give authority for the reproduction of secret documents by members of the Division Engineer's organization. Instructions to reproduce secret maps came directly to the Division Engineer. In reproducing such maps he was assisted by the 14th Engineers. Under regulations in existence prior to receipt of the regulations dated October 12th, the Assistant Chief of Staff, G-2, of the Philippine Department was the person to give authority for the reproduction of secret matter, and the Department Engineer was the agency to reproduce it. The Division Engineer had no instructions to reproduce maps on the 15th and 16th of October, 1940, and gave no authority to anybody to reproduce maps on those days (R. 200, 201). Secret maps of the 14th Engineers and those held under the authority of the Division Engineer were stored in a large double-padlocked box in the map section of regimental headquarters, 14th Engineers, at Fort William McKinley (R. 203). Censored maps have indicated thereon a statement that the map has been censored by authority of the party censoring it, and the undesirable information, secrets, or designs on the map

is deleted therefrom (R. 204). Although rather exceptional, maps may be reproduced by photography (R. 205). Exhibits Nos. 3 to 10, inclusive, withdrawn after trial, were properly introduced and identified by the Division Engineer as seven uncensored maps and one uncensored overlay classified under existing regulations as "Secret" pertaining to the defense of the Philippine Islands (R. 204, 205). Exhibit No. 11 was identified as a photographic negative of a map showing roads and trails, corrected to February 6, 1939, of an area including the southern tip of Bataan, including the Island of Corregidor. Exhibits Nos. 12 to 18, inclusive, were identified as photographic negatives of six secret maps and one secret overlay of a map. The Division Engineer did not authorize anyone to communicate the maps, of which these negatives were reproductions, to Mariano Cabrera and Anis Y. Gepte (R. 204-206), nor were they entitled to receive the information contained in the maps or overlay on or about October 15, 1940 (R. 212).

The evidence further establishes that on or about October 5, 1940, in a conversation with Anis Y. Gepte, a secret operative of the Philippine Army, detailed on work to check Fifth Column activities (R. 265), one Ignacio Agbay, an employee of the City of Manila (R. 215), who had known Gepte for about three months as the son of a prominent Datu in Mindanao and had been introduced to him as Datu Ding, (R. 235), told Gepte, hereafter re-

ferred to as such, that if he wanted to make money, he had a plan which he would introduce to him; that there was a certain map indicating the defense plan which they might sell to the Japanese at a good price. Agbay told him that "the maps will be taken by one of his friends through an officer of the United States Army". Gepte replied that he had friends who might buy them and would look for prospects. Three days later Gepte informed him that he had such a prospect, the Sultan of Mindanao, (a fictitious person, (R. 264)) and asked him for the map, but Agbay stated he could not contact the man with the map that day (R. 215, 216, 236). On the afternoon of October 11th, Agbay introduced Gepte to one Mariano Cabrera who told him he had the map ready at any time if an agreement could be reached (R. 217). Gepte informed Cabrera that he would have to see the Sultan. On October 12th, Gepte met Agbay and Cabrera and told the latter that the Sultan instructed him that "if they are really on the business, they should show him any maps". Later Cabrera showed him a map of Lingayen Gulf marked "Restricted" and permitted him to take it until the next day stating he could furnish any map of the Philippine Islands. Exhibit No. 2, withdrawn at the conclusion of the trial, was identified by Gepte as looking like the "Restricted" map of Lingayen Gulf given him by Cabrera (R. 217, 218, 219). Gepte took the map to an official of the Philippine Army, who, in turn, took Gepte to Major



Evans, G-2, United States Army, where Gepte reported what Cabrera had told him. Major Evans told him to ask Cabrera for the maps of Corregidor, Manila Bay and Channel, Disposition of Troops in Bataan, Philippine Department Defense Plan. At the same time Gepte was turned over to Major Evans until the conclusion of the case (R. 272).

After leaving the house of Major Evans, Gepte returned the blueprint of Lingayen Gulf to Cabrera, asking him for the maps indicated by Major Evans (R. 219, 220). About October 14th after Cabrera gave him a list of four maps stating the total price of (pesos) 65,000, Gepte told him he was going to see the Sultan (R. 220). Later that day Gepte saw Agbay and told him he had informed the Sultan the price was (pesos) 95,000 instead of (pesos) 65,000. Agbay thereupon proposed that they tell Cabrera that the Sultan bargained for (pesos) 45,000, and that they (apparently Gepte and Agbay) would split the (pesos) 55,000 [sic]. Cabrera was informed that the Sultan would pay (pesos) 40,000 to which he agreed. On October 15th, Cabrera informed Gepte that since the business was finished, Captain Romero, the principal, wanted to see him (R. 220, 221). By previous arrangement Gepte met Agbay and Cabrera at the London Restaurant between 5:00 and 5:30 P.M. on October 15th, (R. 225, 268) after which Gepte and his son joined Agbay, Cabrera, the accused, and Mrs. Romero and proceeded in accused's car to Luneta Boulevard. Gepte and Agbay wore white



suits and Cabrera white pants and a brown camisa (R. 225). Upon reaching Luneta Boulevard, Mrs. Romero suggested that they talk the matter over at Captain Romero's house, located at 100 Del Pan, Pasay, [Rizal, P.I.] to which place the party then proceeded, where a further discussion took place, during the course of which the accused informed Gepte that they would go over to Fort McKinley that night in order to make the maps.

About 7:15 P.M., after having supper together, the party departed for Fort McKinley, where the car was parked in front of and across the street from the building containing the regimental headquarters, 14th Engineers (R. 226, 227, 228, 204, 268, Exhibit 1). The accused, Cabrera and Gepte crossed the street, proceeded up the right stairs and after the accused unlocked the door they entered the building, proceeding next to a room containing a safe. While Gepte held a flashlight the accused opened the combination safe, from which he took a "bundle" of keys. They then went to another room on the opposite side of the building where the accused unlocked a chest on the floor and took out of this chest a bundle of maps. They next proceeded to a room which was inside this big room, and which the accused stated was the dark room. At this point the accused placed the bundle of maps on the tables and after ordering Cabrera to put on the light, explained to Gepte and Cabrera about defenses and plans and many things that referred to defenses and plans. The

accused showed them maps. One of these was a map of Corregidor and the accused also mentioned Mariveles and Bataan, emphasizing the mark "Secret" and "Restricted" stamped on each map (R. 228-230, Exhibit 1). Among other things, the accused explained many things about Corregidor, told them Mariveles was a very important defense, and showed Gepte the symbol for a gun emplacement (R. 240, 241). He also talked of national defense, pointing out on the maps places and troop locations (R. 256). These explanations were made to both Gepte and Cabrera (R. 259). The accused told Gepte that since it would take two or three hours to do the mapping and departure from the building too late at night would make somebody suspicious, it would be advisable for him to make the maps at his house the next day. The accused further informed him that he would take the maps the following day from Fort McKinley and photograph them at his house at 100 Del Pan, Pasay, because by giving him the negative, "millions of copies" could be made. Accused then put the maps in the "big chest" and went to the safe and locked it. The party then returned to the accused's house about 8:30, the accused taking with him a roll of paper and Cabrera two bottles containing a liquid, which they had brought from the accused's house, for use in making the photograph of the map (R. 230, 269). Exhibits 3 to 10, inclusive, were identified by Gepte as looking like the maps that were shown him by the accused on

the night of October 15 at Fort McKinley (R. 231, 232). Upon return of the party to the house of the accused, they talked about the price, and the accused asked for (pesos) 50,000. Gepte told him he would take the matter up with the Sultan.

After further negotiation, the accused, at about 11:00 A.M. on October 16th, telephoned Gepte that he was going to get the maps about 1:00 P.M. and that he would start photographing them about 2:00 P.M., and asked him to come to his house at once. The accused told Gepte at this meeting of his distrust in him, and that if he were a person of the law and the case came before the proper authorities, he (accused) would be accused of a crime more serious than murder. Gepte replied that if anything happened he would not go back to Mindanao but would prefer to commit suicide, to which accused replied that he would proceed with the transaction, and that he trusted him. At 2:30 P.M. Gepte accompanied the accused and Cabrera to a dark room in the basement of the accused's house, where the latter and Cabrera placed three trays containing colored liquid on the table, turned off the lights, and started the developing (R. 232, 233, 250). After about an hour, someone turned on a light and there were eight negatives in the trays (R. 250, 251). The accused then said he was finished with the developing and showed Gepte four negatives, which were still a little wet, through a light. The latter identified Exhibits 11 to 18, inclusive, as looking like the negatives that were

shown him in the dark room in the accused's house (R. 234, 235), and further identified the negatives shown him by the accused as representing maps similar to the ones shown him at Fort McKinley on October 15, 1940 (R. 252). Gepte suggested to the accused that the negatives be placed in order with the original maps in such a way that when he (Gepte) returned with the Sultan, they could check them immediately and leave the place as soon as possible. The accused agreed (R. 235, 259).

While the events indicated above were taking place, Major Evans, Assistant to the Assistant Chief of Staff G-2, Philippine Department, to whom Gepte had previously given information to the effect that he had been approached by a representative of the accused, made arrangements for searching the residences of the accused and Cabrera (R. 273).

At about 4:30 P.M. on October 16th, a Constabulary party, accompanied by Major Evans, and armed with a search warrant, which was properly introduced in evidence, read into the record, and a certified copy of which is attached and marked Exhibit 20, raided the residence of the accused at 100 Calle Del Pan, Pasay, Rizal, in one room of which they found the accused and Cabrera, and eight photographic negatives, apparently drying, all of them reproductions of secret maps, as well as several rolls of classified maps and overlays (R. 273, 274, 290, 293, 294). In the basement a dark room indicated recent use (R. 274, 299, 309), and an assortment of

photographic materials was found therein (R. 308, 309). Certain other classified documents were found in the automobile of the accused (R. 274, 299). Ignacio Agbay was discovered about to leave the house by the rear stairway (R. 299). Major Evans took possession of all the maps and photographic negatives so as to prevent other members of the raiding party from seeing them, and also took custody of the accused (R. 274, 300). He later delivered the documents to Lieutenant Colonel Harland F. Seeley, Assistant G-2, Philippine Division (R. 279). Exhibit No. 2 was identified by Major Evans as the restricted map of Lingayen Gulf Area shown him by Gepte (R. 280). Exhibits 3 to 10, inclusive, were identified by Major Evans, by his *initals* placed on each, and Exhibits 11 to 18, inclusive, by distinctive clippings at the corners which he made himself, as the maps and negatives which he found in the raid on the accused's residence (R. 281-283). Major Evans testified that there was no authority for the communication of these maps to Mariano Cabrera or Anis Y. Gepte. There was no authority given to the accused by the office of the Assistant Chief of Staff G-2, Philippine Department, which coordinates and supervises reproduction of maps to reproduce these maps or any other maps on October 16th (R. 284). Simultaneously with the raid described above, a party from the Philippine Constabulary headed by Lieutenant Villafria, Philippine Constabulary, executed a search warrant in the house of Cabrera, finding therein among other things, a restricted map



of Lingayen Area. Lieutenant Villafria identified Exhibit No. 2 as the restricted map of Lingayen found in Cabrera's house (R. 312, 313). Exhibits 3 to 10, inclusive, were identified by Lieutenant Colonel Harland F. Seeley, Assistant to the Assistant Chief of Staff G-2 and 3, Philippine Division, (R. 337), by the initials placed on them by Major Evans in his presence, as the maps and overlay, given him by Major Evans on the night of October 16, 1940. He also testified that the maps are classified as secret and so marked. Exhibits 11, 12, 13, 14, 15, 16, 17, and 18, in turn, were identified by the same witness as reproductions of Exhibits 3, 4, 5, 6, 7, 8, 9, and 10, respectively, and by the clipped corners on each, as the negatives turned over to him on the evening of October 16th (R. 325, 333). The maps were continuously in his possession from the time of their receipt from Major Evans until they were turned over to the Trial Judge Advocate of this court (R. 334). All authorizations for the reproduction of the maps in evidence came through the Assistant to the Assistant Chief of Staff G-2 and 3, Philippine Division, under direction of the Division Commander, who is also the Commanding General, Fort William McKinley (R. 337, 334). The accused had no authority from anyone at Headquarters, Philippine Division, to reproduce these or any other maps on or about October 16, 1940 (R. 333).

The accused, after having been warned that he need not answer any question or make any statements, but that if he did so, what he said might be



used against him, admitted to Colonel Baehr, G.S.C., then Acting Commanding Officer, Fort William McKinley, that he was involved seriously as to his personal finances, that he had been tempted to divulge secret information, from which he could expect to receive financial return (Exhibit 19).

Lieutenant Myron B. Page, Jr., 14th Engineers, whom the accused relieved as Assistant Division Engineer on October 15th, was still signed up for secret maps on that date and still had access to the map case. The accused had proceeded to check secret maps on the morning of that date, assisted by Master Sergeant Delda, 14th Engineers, preparatory to transfer of accountability therefor (R. 347, 363). While the accused was engaged in checking the maps, Sergeant Delda told him there were certain maps which had to be returned to the Department Engineer (R. 363). After the accused's departure about 12:50 P.M., October 15th, Lieutenant Page, upon instructions from the Assistant to the Assistant Chief of Staff G-2, Philippine Division, made a check of secret maps but none were missing (R. 347). Another check was made between 8:30 P.M. and 9:15 P.M. on that same day, but none of the maps were missing (R. 348). Lieutenant Page identified the figure 3 on Exhibit 1 as the location of the secret map chest (R. 352) and Exhibits 3 to 10, inclusive, as the maps detailed in the specifications of the charge (R. 353, 354). These specific maps were present at the check of the maps in the map chest made about 8:30 P.M., October 15, 1940 (R. 390). On the

night of October 15th there were two sets of keys to the map chest. One set was in possession of Lieutenant Page, and the other set was in the regimental safe (R. 352). Colonel Skerry, Major Manzano, Lieutenant Page and the accused were the persons having the combination of the safe on October 15 and 16, 1940 (R. 358). None of the maps in evidence were removed from the map chest between 7:30 P.M., October 15th, 1940, and 4:30 P.M., October 17, 1940, by Colonel Skerry, Major Manzano or Lieutenant Page, except that as indicated above, Lieutenant Page removed them temporarily for the purpose of checking maps, after which they were returned to the chest and securely locked (R. 383, 386, 390).

At about 7:45 A.M. on October 16th while all other officers were attending an officers' call, the accused, who had obtained keys to the map chest from Lieutenant Page for the purpose of continuing his check of secret maps, told Sergeant Delda to get out the maps that were supposed to be returned to the Department Engineer and place them on the drafting table (R. 348, 363). Exhibits 3 to 10, inclusive, were not among those to be so returned (R. 369). After the accused was through going over the maps he told Sergeant Delda to put back those he did not take. He also told Sergeant Dangoy, another non-commissioned officer, to wrap up what he was going to take along. He then departed in a taxicab, stating he was going to the Department Engineer (R. 363, 364). Sergeant Delda returned the keys to the map chest to Lieutenant Page about 8:15 A.M., during

officers' call (R. 349). A check of all secret documents at Regimental Headquarters, 14th Engineers, including secret documents in the safe, by Colonel Skerry, Major Manzano and Lieutenant Page, was commenced about 8:00 P.M., October 16th and continued most of the night (R. 349, 353). When discontinued both sets of keys to the map chest were locked in the safe and a guard was posted at regimental headquarters the rest of the night, and also during an alert held on the morning of October 17th as well as during lunch hour that day (R. 353, 391, 396). No one entered regimental headquarters while the guard was on duty on the night of October 16-17 until Colonel Skerry relieved him on the morning of October 17th (R. 395). No one opened the safe or the map chest during the period of the alert or during lunch hour on October 17th (R. 396). When the check of the secret map chest in regimental headquarters, 14th Engineers, was completed at 4:30 P.M. on October 17, 1940, the maps in evidence were missing from the map chest (R. 355, 391, 392), and later found to be those in the possession of Colonel Seeley (R. 392).

The evidence further establishes that about the early part of September, the accused consulted a technician of the Kodak Philippines, Ltd., Manila, P.I. relative to equipment for photographic reproduction of maps (R. 569, 570, 579, 586). On September 7, the Kodak Philippines, Ltd., Manila, P.I., delivered to the accused certain items of photographic equipment, billed to the Post Exchange Nichols Field

(R. 571, 572, Exhibit 21). The film in this list was suitable for reproduction of line work, i.e., printed matter, pencil and ink sketches, drawings and maps, but not portrait work. Being panchromatic film, it is capable of reproducing colors when used with the proper filters (R. 572). Exhibit 17 (photographic negative) was identified by a photographer of the Kodak Philippines, Ltd., as film that would fit the camera sold on the invoice to the Post Exchange, Nichols Field, and delivered to accused, and suitable for reproduction of maps or for lithography (R. 582, 583).

Anis Y. Gepte, the principal witness for the prosecution, testified that he never made any promises to Agbay that would lead the latter to believe he was working for him on this case against the accused; and that he never promised him that he would get a job as detective or investigator if he helped him on the case, or told him there would probably be a Government reward in this case and he would share in it if he helped on the case, nor did he offer Cabrera any reward for helping him on the case (R. 412, 413).

(2) For the Defense.—So far as it can be pieced together, the testimony of Ignacio Agbay, an alleged co-conspirator of the accused, who was duly warned of his constitutional rights in the premises before he testified and several times during his testimony (R. 404, 405, 410, 430, 444), is in substance as follows: He first met Gepte on September 15, 1940, and knew him as Datu Ding. He met him again at the London

Restaurant about the 10th of October (R. 433). At this time he knew Gepte was a Constabulary informer as the latter had told him so on their first meeting (R. 442). In their conversation he "unconsciously" told Gepte about certain plans, consisting of house plans and blueprints, one of the latter being a map of Lingayen Gulf, which the accused had entrusted to his (Agbay's) friend Mariano Cabrera, who had told him about the plans in his possession about eight months before (R. 454, 455, 462, 463, 474, 478). Gepte told him if he would work with him, under his instruction, he would give witness "thousands" in cash out of a reward from "the Government", as well as a recommendation for a position as secret service man or agent of the Philippine Constabulary in the event they were successful on the case he was after, which was a frame-up case on the accused, whom witness did not know at the time (R. 447, 452). This frame-up involved the sale of plans (R. 454). As Assistant to Gepte, Agbay was to introduce him to accused using Cabrera as intermediary (R. 451, 452, 455). In accordance with the agreement he made with Gepte, he had Cabrera introduce him (and apparently Gepte also (R. 461)) to the accused about 5:00 o'clock on the afternoon of October 15th (R. 461, 465), but mentioned nothing to Cabrera, his friend of seven or eight years standing, about the plan to frame the accused (R. 464). The plan was to make Cabrera and the accused "believe that there will be a buyer of the plans in case those plans will be of value" (R. 467). (At another point



during his testimony witness testified he met accused once before the meeting on the 15th of October through Cabrera, in order to do a favor for a girl friend who was looking for a job (R. 474)). He had no idea the plans in Cabrera's possession had any value, and for that reason had never reported the matter to proper authorities (R. 484).

The substance of the testimony of Mariano Cabrera, another alleged co-conspirator of the accused, is as follows: He first met Gepte on October 13th through his friend Agbay (R. 511). At this meeting, after showing Gepte "the map", the latter told him that a Sultan wanted to buy maps and asked him if he could introduce them (evidently meaning Gepte and Agbay) to the accused (R. 512, 513). Witness thereupon grabbed the plans and maps and asked Gepte why he wanted him to do that when he was a "D. I." He knew Gepte was a "D. I." because when he met him on this occasion he saw "a whistle and a big knife" on his right side (R. 514). In a private conversation Gepte shortly after admitted to him he was a "D. I." (R. 514), and asked him to help in an investigation being made of the accused because of gambling (R. 525). Upon informing Gepte that he had had a quarrel with the accused about three or four days before, Gepte offered him 500 pesos out of a premium from the Government and promised to recommend him as a special agent. At the same time Gepte told him to follow every instruction (R. 524, 525). Witness was willing to lay a trap for the accused, whom he had known for more than three



years, because he could not forget the quarrel between the accused and himself, and because of Gepte's promise of a reward and his further promise that Captain Romero would not be harmed, but only discharged from the Army (R. 526). At this time witness and the accused were publishing a magazine. The accused was supervisor and planned to do the photography for the magazine (R. 526, 527). On the night of October 15th, he and Agbay met Mrs. Romero and the accused, who invited them to go to his house (R. 521). Later they went to the London Restaurant and picked up Gepte and his son and returned to the accused's house. After eating he, Mrs. Romero, Gepte, Agbay and son, and the accused drove to Fort McKinley (R. 504, 515), to enlarge pictures (R. 505). Witness sat in the front seat but could not remember who drove the car (R. 504, 505, 518, 519, 520). He did not know exactly why Gepte came along on this trip (R. 515, 516).

After the party arrived at Fort McKinley about 8:00 P.M., witness together with Gepte and the accused entered a building at Fort McKinley (R. 498). Upon entering this building, the accused turned on a light, and after opening a door on the left, turned off the light (R. 505). Witness, upon instructions from the accused, entered the dark room with chemicals and papers for enlarging pictures and negatives. The accused did not accompany him to the dark room (R. 499). Arriving in the dark room, he made preparations for the developing of pictures but discovered that one chemical was missing. As he was about

to go out he met Gepte and the accused at the door just as they were about to enter and told the accused that he was unable to proceed with enlarging pictures. The accused told him that they would do no more. Thereupon he returned to prepare the bottles, papers and negatives for their return. He did not see the accused carrying anything because it was dark outside the "dark room", but he could clearly see both Gepte and the accused, and would have known whether accused had maps in his hand because they were close together (R. 499, 500). (Witness later testified the accused and Gepte accompanied him to the dark room at first but left him. When he discovered the chemical was missing he came out to tell the accused, whom he observed talking to Gepte at the second door, outside the dark room (R. 501, 502). Although the light was off at the time he could notice them because of the window and because "they wore white cloth" (R. 507)). The witness estimated they were in the building about twenty minutes (R. 503, 504). He did not see the accused carry anything out of the building (R. 518). He did not help the accused with the photographic work or see any negatives the following day (R. 516, 527). When properly confronted with a signed statement made by him on October 16th, inconsistent with his testimony on this last matter, the witness offered the explanation that the statement was made under instructions of Gepte to give "any statement very good for him or for me", if he were forced to make a statement (R. 528, 530); also because Lieutenant Villafria, to whom he made

the statement, told him just to sign it and it would not harm him (R. 529).

The competent evidence of Antonio Garcia, relative to the credibility of Gepte, establishes that once in 1939, Gepte employed him temporarily as a police "especial". He gave him two cans of opium and told him to put it in the Chinese store of Ah-Gong and let him know where he put it, and that then he (Gepte), together with the Constabulary, would take the opium (R. 542, 545).

Anis Y. Gepte, the principal witness for the prosecution, admitted upon recross-examination that he had once been convicted of "estafa" (fraud) about twenty-five years ago when he was very young. This was known by the Philippine Army when he was employed as an investigator. Another case pending against him, partly connected with his duties, involves the shooting of a person. That happened while he was already employed by the Philippine Army (R. 411, 412, 422, 423).

The accused, after having his rights explained to him, elected to make an unsworn statement (R. 551-554). Insofar as it relates to denial, explanation or extenuation of the offenses charged against him, the statement, which includes a great deal of matter which is properly argument, is in substance as follows: He intended to return the maps presented in evidence, together with other obsolete maps, to the Department Engineer on the day following his arrest. He told Colonel Baehr that he was prepared to destroy the evidence in question after he accom-

plished his plan to teach his persecutors to leave him alone. The purpose of the visit to Engineer Headquarters was to enlarge some pictures, and Mr. "X" (Gepte) insisted on coming, according to him, in order to convince the Sultan that he had been to Fort McKinley (R. 555, 556). Mr. "X" saw no maps or blueprints at Engineer Headquarters (R. 557). He told Cabrera about his plans to surprise Gepte when he came back at 5:00 P.M. on October 16th, and sent his children to the beach in anticipation of his plans to end all the unnecessary snooping on him. He told Colonel Baehr and Major Evans that he was aware that Constabulary operatives were snooping on him for a long period (R. 562). It never entered his mind to communicate any secret information. He always kept many maps in his quarters or residence, as he worked on them at home. The map found in Cabrera's house was one of "those restricted blueprints Sergeant Delda said were usually used for wrapping or for scratch pad work". He never mentioned to any unauthorized person that he had custody of secret documents. He did not report the matter to the proper authorities because these were the ones bent on getting him. He made several reports of subversive activities that came to his attention. He raided a suspect himself and turned in his findings to his Commanding Officer (R. 563). This year he turned in an espionage report concerning Bataan and Olongapo. Even after his arrest he gave Major Evans intelligence he gathered that some nation already has secured a copy of every secret map we have (R. 564).

b. Opinion.

(1) In my opinion the findings of guilty are legally sustained by the evidence. Although Gepte, the principal witness for the prosecution, to whom it is alleged the accused communicated the maps set out in Specification 1, could not positively identify Exhibits 3 to 10, inclusive, as the maps which he saw at Fort William McKinley on the night of October 15, 1940, there is evidence to show that he asked Cabrera to get maps of Corregidor, Manila Bay and vicinity, disposition of troops at Bataan and the Philippine Department defense plan (R. 220). Gepte testified that on the visit to Fort McKinley the accused showed Cabrera and him certain maps, one of which was a map of Corregidor. While discussing this map he mentioned Mariveles and Bataan, and emphasized the marks "Secret" and "Restricted" on each map. He also explained defenses and plans and showed him a symbol for a gun emplacement (R. 229, 240). These circumstances coupled with the finding of the eight maps specified, together with the eight negatives of those maps, in the residence of the accused the afternoon following, justifies the inference that the accused communicated those particular maps to Gepte and Cabrera on the night of October 15th. Also, the finding of the eight maps, and the eight negatives of the same, at the house of the accused, when considered with the circumstances surrounding the events of the preceding evening justified the court in concluding that the accused in fact reproduced the maps as alleged in Specification 2.



The details of the evidence respecting the conspiracy to communicate and to reproduce maps, as alleged in Specifications 3 and 4, respectively, are so interwoven as to prevent any clear separation thereof. However, in my opinion, the evidence as the whole, with particular reference to the purposes of the conspiracy and the acts of the alleged conspirators preceding and following the meeting at the residence of the accused on the night of October 15th, establishes the essentials of both the conspiracy to communicate and the conspiracy to reproduce. Inasmuch as the offenses of the communication and of the reproduction of maps are, by statute, separate offenses from the conspiracy to commit such offenses (50 U.S.C. 31 (d), 45b; 18 U.S.C. 88), it cannot properly be said that the conspiracy to communicate or the conspiracy to reproduce merged in the corresponding completed crime (Miller, Criminal Law (1934) sec 13, 32 (d)). And in my opinion, upon similar reasoning, neither does the one conspiracy merge in the other.

Motive for the crimes is shown by the accused's admission to Colonel Baehr that he was seriously involved in his personal finances (Exhibit 19).

(2) Paragraph 3, Special Orders No. 45, Headquarters Philippine Division, dated November 4, 1940, details Lieutenant Colonel Emil C. Rawitser, Judge Advocate General's Department, Headquarters Philippine Department, as member and law member of the general court-martial appointed by paragraph 1, Special Orders No. 44, Headquarters



Philippine Division, dated October 30, 1940, for the trial of the accused (R. 1, 2). The record does not show that Lieutenant Colonel Rawitser was made available to the Commanding General, Philippine Division, for this duty. The records of this office show that the officer in question was in fact made available for this duty on November 1, 1940 by verbal instructions of the Commanding General, Philippine Department, which instructions were made of record by a letter to the Commanding General, Philippine Division, on the same date. It is not necessary that every fact essential to jurisdiction of a court-martial should be set out in the record in each case, but with respect to formal matters relating to the creation of the court there is a presumption of regularity (*McRae v. Henkes*, 273 Fed. 108 (C.C.A. 8th, 1921), cert. den. *Henkes v. McRae*, 258 U.S. 624 (1921); Dig. Ops. JAG (1921) p. 58). However, for your information and for the information of the confirming authority, there is attached hereto a copy of the letter, referred to above, making the services of Lieutenant Colonel Rawitser available for the duty in question.

(3) The reporter was sworn, and the Assistant Trial Judge Advocate announced the names of the members of the court present, before the announcement of the name of the accused and the introduction of counsel (R. 3). Although such procedure was irregular (par. 56 and Appendix 6, M.C.M. (1928)), in my opinion it did not injuriously affect the substantial rights of the accused.

(4) At the beginning of the trial the accused stated that he desired to introduce individual counsel, but in answer to the question whether he desired to have the regular defense counsel and assistant defense counsel sit as associates and collaborate with the civilian counsel, he replied "No. I want the regular detailed officers to conduct the defense and the civilian defense counsel [to] cooperate and act as associate counsel" (R. 4). The court granted the request of the accused and permitted Mr. Benjamin de Guzman to act as associate defense counsel.

Under A. W. 17 the accused had the right to be represented in his defense before the court by civilian or military counsel of his own selection, otherwise by the defense counsel duly appointed for the court pursuant to A. W. 11. Where the accused has counsel of his own selection, the defense counsel and assistant defense counsel, if any, of the court, are required, if the accused so desires, to act as his associate counsel (A. W. 17). By the request of the accused to have the defense counsel and assistant defense counsel conduct his defense, they became, in effect, military counsel of his own selection (par. 43b, M.C.M.). Except as noted above, there appears to be no provision for associate counsel, military or civilian. On the other hand, I have been unable to find any express prohibition against permitting an accused to be represented by such counsel. In my opinion the court, in the interest of the accused, properly granted the privilege, but subject to its restriction as circumstances might require.

(5) The record does not show that the question of challenge of one of the members of the court by the defense, for cause, was decided by secret written ballot (R. 93), as is expressly required by A. W. 31. However, it will be noted that this error has been corrected by the certificate attached to the record.

In this connection the record also shows that the challenged member resumed his seat before the court announced that the challenge was not sustained (R. 93). The irregularity, if any, does not injuriously affect the rights of the accused, since no proceedings intervened between the resumption of his seat and the announcement of the court on the challenge.

In a subsequent session, the prosecution suggested a further examination of the challenged member, mentioned above, in order to have him clarify his answers previously given upon examination as to his competency. The law member ruled that subject to the objection of any member of the court, a further examination could be made. A member having objected, the court was cleared and closed, the member who had been previously challenged also withdrawing from the court (R. 189). Although the challenge of the member was not sustained in the original proceedings on the question, the exclusion of the member was proper since, as stated by the court, the member was involved in the matter (See Dig. Ops. J.A.G. 1912-1930, sec. 1347 (2)).

(6) During the presentation of testimony relating to the secret maps offered in evidence, the court excluded, among others, all non-military personnel, including the associate defense counsel, a civilian. There was no objection by the accused, his defense counsel, assistant defense counsel, or the associate defense counsel to this ruling (R. 202 et seq).

In view of the opinion expressed in (4), above, and of the penalty provided in section 1 (d) of the act of June 15, 1915 (40 Stat. 217; 50 U. S. C. 31) as amended by the act of March 28, 1940 (Pub. No. 443, 76th Cong.), for the communication of maps, photographic negatives, plans, etc., relating to national defense to any person not entitled to receive the same, the court was justified in excluding the associate defense counsel. The substantial rights of the accused were not injuriously affected thereby, in view of the fact that he continued to be represented by counsel placed in charge of his case at his own request.

(7) During the trial the accused, through his defense counsel, requested that the court excuse the assistant defense counsel, Captain Ivy, during the remainder of the case, stating that the accused "feels a certain amount of antipathy against the Assistant Defense Counsel and feels that the Assistant Defense Counsel has a certain amount of antipathy toward the accused". There being no objection by any member thereof, the court, after asking the accused whether he requested any other

officer to assist in his defense and receiving a reply in the negative, excused Captain Ivy and directed him to withdraw (R. 224). The record fails to show that the assistant defense counsel withdrew.

The Manual for Courts-Martial (1928), does not specifically provide for the excuse of defense counsel (See par. 44b, M.C.M.) at the request of the accused (par. 43a, M.C.M.). However, paragraph 107b, Manual for Courts-Martial (1921) provides that if the accused, whether or not he has individual counsel, especially requests that the defense counsel or any particular defense counsel take no part in the case, the court will excuse him from attendance at the trial. The latter provision appears to have been omitted in the 1928 Manual, and to that extent is believed to be applicable to the present case (M.C.M. 1928, Introduction, p. vii). Accordingly, I am of the opinion that the action of the court in excusing the assistant defense counsel was proper.

The failure of the record to show the withdrawal of the assistant defense counsel has been corrected by the certificate attached to the record.

(8) At the beginning of the session of the court held on November 14, 1940, the president made the following announcement: "The court takes notice of the fact that the Associate Defense Counsel Benjamin D. de Guzman has withdrawn from the case" (R. 247). There is no affirmative showing that the withdrawal was with the consent of the



accused and the approval of the court. However, as to the former, the record discloses no objection by the accused or his defense counsel to the withdrawal and it is reasonable to presume from such omission that consent had in fact been given. As to the latter, there is no statute whereby a military court can compel the attendance of civilian counsel, particularly an associate civilian counsel for which there is no provision in the Manual for Courts-Martial (par. (4), *supra*), and whose original participation in the trial must necessarily have been permitted as an indulgence by the court. Hence, whatever may be the general rule in civil courts requiring the formality of express approval (7 C.J.S. 110), in the present case such action would have been superfluous. The accused continued to be ably defended by Major Johnston, the defense counsel in charge of his case, and no substantial right of the accused was injuriously affected by the withdrawal.

(9) Major Evans, a witness for the prosecution, was permitted to testify to a statement made to him by one of the alleged co-conspirators concerning the manner in which, and the purpose for which, the map found in the house of the co-conspirator by the Constabulary raid party came into his possession. So far as the record discloses, the statement was evidently made after accomplishment of the common design, and therefore was improperly admitted in evidence (par. 114c, M.C.M.). However, there was sufficient competent evidence to establish



both of the items referred to, and for that reason the improper admission of the statement did not injuriously affect any substantial right of the accused.

(10) Upon the recall of Ignacio Agbay as a witness for the defense, counsel stated that the attorney for the witness, Benjamin C. de Guzman was present in court and requested permission to be seated with the counsel for the defense during the interrogation of the witness (R. 427). The court permitted counsel for the witness to have a chair placed beside the witness and to advise the witness concerning his answers to questions, but instructed counsel that he would not be permitted to answer the questions for the witness (R. 428).

In my opinion the admission of counsel for the witness was a matter in the discretion of the court and subject to such conditions as it might impose (Winthrop, *Military Law and Precedents* (2d Ed. Reprint 1920) p. 167). However, the original conditions do not appear to have been appropriate tending, as the record discloses, to frequent promptings of the witness by his counsel, against which practice it became necessary to caution him (R. 440, 451), and ultimately to remove him from the side of the witness (R. 455). As indicated in the authority cited above, a better procedure would have been to permit counsel to be seated with counsel for the defense during the interrogation. However, the record shows that the court was ex-

tremely liberal in permitting the counsel to advise the witness, concerning the latter's answers to questions, throughout his entire testimony. In any event, no substantial right of the accused was injuriously affected by the action of the court.

(11) The accused and the defense counsel both contended that the accused was exempt from criminal liability because methods of entrapment or instigation were used for the purpose of detecting and apprehending him (R. 563, 622, 630). The evidence as to who provided the inducement or persuasion under which the accused acted in committing the alleged offenses is conflicting. Agbay testified that it was Gepte who made the original proposal to procure plans from the accused in order to trap him, after he happened to mention to Gepte certain maps which the accused had entrusted to his friend Cabrera. His testimony was in part supported by Cabrera. On the other hand, Gepte testified that Agbay suggested the plan to sell maps to the Japanese, and told him that the maps would be obtained through his friend Cabrera from an officer of the United States Army. The court apparently refused to believe the testimony of Agbay and Cabrera and chose instead to believe Gepte. In my opinion the court was justified in so doing. In his testimony Gepte denied that he had made any promises that would lead Agbay to believe he was working for him on the case against the accused, or ever promised him

a job or a share in a reward for helping him on the case. The record shows that Agbay was an unwilling witness and exhibited a marked lack of frankness while he was testifying. Cabrera's explanation that he was willing to frame the accused because of a quarrel with him does not appear plausible in the light of his association with the accused. In addition, there were certain discrepancies in his testimony, and he was shown to have previously made a statement inconsistent with his testimony on the stand, all of which make his testimony of doubtful probative value. The remaining evidence bearing on this point establishes that Cabrera showed Gepte the map of Lingayen Gulf as proof that he could get other classified maps, and permitted him to take it. Gepte later took the map to G-2, Philippine Department, and at this time he was turned over to G-2 until the completion of the case.

From the foregoing, I am of the opinion that the court was justified in reaching the conclusion that the inducement to commit the offense originated with Agbay or Cabrera. As neither of these persons was an officer of the law nor of the Government, nor acting in a representative capacity for them, the accused could not avail himself of the defense of entrapment (*Polski v. United States*, 33 Fed. (2d) 686 (C.C.A. 8th, 1929); *Miller, Criminal Law* (Ed. 1934) sec. 60). Nor, in my opinion, does the fact that Gepte later became a representative of the Government, and as such asked

Agbay and Cabrera to obtain certain other maps, alter this conclusion, since there was reasonable ground at that time to believe that the law was being violated or was about to be violated. Under those conditions he was justified in attempting to secure additional evidence that the accused was violating the law. (Casey v. United States, 276 U.S. 413 (1928); Miller, Criminal Law (Ed. 1934), sec. 59 (e)).

(12) There were some instances of the reception of hearsay (R. 324, 325) and conclusion (R. 336) testimony, but these irregularities were not such as to prejudicially affect any substantial right of the accused.

(13) It is my opinion that the record of trial is legally sufficient to support the findings of the court, and the sentence, and is free of any error injuriously affecting the substantial rights of the accused.

(14) By A. W. 96, the punishment is in the discretion of the court. In view of the penalties provided in sections 31 and 45 of Title 50 and section 88 of Title 18, of the United States Code, the sentence adjudged by the court is considered appropriate under the circumstances of the case.

Confinement in a penitentiary is authorized by A. W. 42 and section 335 of the United States Criminal Code (18 U.S.C. 541). Under current regulations of the Philippine Department, unless a penitentiary is designated, the place of confinement

for general prisoner, other than American general prisoners, is ordinarily the home station of such general prisoners (par. 73c, P.D.R., H.P.D. (1938)). Confinement in the Philippine Islands is not considered appropriate for the following reasons: (a) the announced policy of the War Department to separate general prisoners convicted of offenses punishable by penitentiary confinement from general prisoners convicted of purely military offenses, or of misdemeanors (par. 90a, M.C.M.); and (b) the peculiar knowledge of the accused of the national defense plans and of the topography of Luzon, with the attendant opportunity, due to lack of facilities for proper supervision, of transmitting such information to persons unauthorized to receive the same.

In view of the above, it is believed a recommendation should accompany the action of the reviewing authority to the effect that, if the sentence is approved, a penitentiary in the United States be designated as the place of confinement.

5. Recommendation.—For the reasons above stated it is recommended that the sentence be approved and the record of trial be forwarded for action under the 48th Article of War. It is further recommended that a separate recommendation accompany the action to the effect that, if the sentence is approved by the confirming authority, a penitentiary in the United States be designated as the place of confinement.

A form of action, and a form of recommendation, designed to accomplish the action here recommended

are attached for your consideration, and for your signature on each in case it should meet with your approval.

6. The delay in returning this record was due to the lengthy and involved evidence and to the unusual number and nature of the legal questions presented therein, requiring consideration by this office in preparation of the review.

ALBERT SVIHRA,

Major, J.A.G.D.,

Division Judge Advocate.

1 Incl.—

Copy of Letter, 11-1-40.

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Proceedings of a General Court-Martial which convened at Fort William McKinley, Philippine Islands, pursuant to the following orders:

HEADQUARTERS PHILIPPINE DIVISION

Fort William McKinley, P. I.

October 30, 1940.

Special Orders No. 44:

1. A general court-martial is appointed to meet at Fort William McKinley, P. I., at 1:00 p. m., on November 5, 1940, or as soon thereafter as practicable, for the trial of Captain Rufo C. Romero, Philippine Scouts, 14th Engineers (PS), only.

Detail for the Court

Colonel Clifford Bluemel, 45th Infantry (PS).



Colonel Seth H. Frear, PS (Sig C), Hq Phil Div.

Colonel William E. Brougher, 57th Infantry (PS).

Lieutenant Colonel Alfred S. Balsam, 12th QM Regt (Div) (PS).

Lieutenant Colonel John W. Thompson, 57th Infantry (PS).

Lieutenant Colonel James W. Callahan, Jr., PS, 45th Infantry (PS).

Lieutenant Colonel Edwin E. Aldridge, 57th Infantry (PS).

Lieutenant Colonel William F. Dalton, 57th Infantry (PS).

Lieutenant Colonel Donald Van N. Bonnett, 45th Infantry (PS).

Major John W. Irwin, 45th Infantry (PS).

Major Pembroke A. Brawner, 57th Infantry (PS), law member.

Major Narciso L. Manzano, PS, 14th Engineers (PS).

Major Santiago G. Guevara, PS, 45th Infantry (PS).

Lieutenant Colonel Lewis C. Beebe, 57th Infantry (PS), trial judge advocate.

Captain Edgar Wright, Jr., 45th Infantry (PS), assistant trial judge advocate.

Major Howard D. Johnston, 23rd Infantry Brigade (PS), defense counsel.

Captain James M. Ivy, 57th Infantry (PS),  
assistant defense counsel.

By command of Major General Pratt:

C. A. BAEHR,

Colonel, General Staff Corps,  
Chief of Staff.

Official:

Signed: CARL H. SEALS,

CARL H. SEALS,

Colonel, Adjutant General's  
Department,  
Adjutant General.

Distribution "S-1"

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Records Div (18) [1\*]

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## HEADQUARTERS PHILIPPINE DIVISION

Fort William McKinley, P. I.

November 4, 1940.

Special Orders, No. 45:

Extract

\* \* \* \* \*

2. Major Pembroke A. Brawner, 57th Infantry (PS), is relieved as law member only of the general court-martial appointed to meet at Fort William McKinley, P. I., by paragraph 1, Special Orders No. 44, this headquarters, October 30, 1940.

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\*Page numbering appearing at foot of page of original Reporter's Transcript.

3. Lieutenant Colonel Emil C. Rawitser, Judge Advocate General's Department, Headquarters Philippine Department, is detailed as member and law member of the general court-martial appointed to meet at Fort William McKinley, P. I., by paragraph 1, Special Orders No. 44, this headquarters, October 30, 1940.

4. Captain Victor R. Hirschmann, Medical Corps, 12th Medical Regiment (PS), is detailed as member of the general court-martial appointed to meet at Fort William McKinley, P. I., by paragraph 1, Special Orders No. 44, this headquarters, October 30, 1940.

By command of Major General Pratt:

C. A. BAEHR,

Colonel, General Staff Corps,  
Chief of Staff.

Official:

CARL H. SEALS,  
Colonel, Adjutant General's  
Department,  
Adjutant General.

Copy to:

Each Off

CG Phil Dept

CO 57th Inf

CO 12th Med Regt

Div JA

Off Div

Rec Div [2]

Fort William McKinley, P. I.  
November 7, 1940.

The court met pursuant to the foregoing orders at 2:05 o'clock, P. M.

PRESENT

Colonel Clifford Bluemel, 45th Infantry (PS).

Colonel Seth H. Frear, PS (Sig C), Hq Phil Div.

Colonel William E. Brougher, 57th Infantry (PS).

Lieutenant Colonel Emil C. Rawitser, Judge Advocate General's Department, Headquarters Philippine Department (Law Member).

Lieutenant Colonel Alfred S. Balsam, 12th QM Regt (Div) (PS).

Lieutenant Colonel John W. Thompson, 57th Infantry (PS).

Lieutenant Colonel James W. Callahan, Jr., PS, 45th Infantry (PS).

Lieutenant Colonel Edwin E. Aldridge, 57th Infantry (PS).

Lieutenant Colonel William F. Dalton, 57th Infantry (PS).

Lieutenant Colonel Donald Van N. Bonnett, 45th Infantry (PS).

Major John W. Irwin, 45th Infantry (PS).

Major Pembroke A. Brawner, 57th Infantry (PS).

Major Narciso L. Manzano, PS, 14th Engineers (PS).

Major Santiago G. Guevara, PS, 45th Infantry (PS).

Captain Victor R. Hirschmann, Medical Corps, 12th Medical Regiment (PS).

Lieutenant Colonel Lewis C. Beebe, 57th Infantry (PS), Trial Judge Advocate.

Captain Edgar Wright, Jr., 45th Infantry (PS), Assistant Trial Judge Advocate.

Major Howard D. Johnston, 23d Infantry Brigade (PS), Defense Counsel.

Captain James M. Ivy, 57th Infantry (PS), Assistant Defense Counsel.

### ABSENT

(None)

Katherine Mason was sworn as reporter.

The order appointing the court and the amending order were read by the Assistant Trial Judge Advocate.

The Assistant Trial Judge Advocate then announced the names of the members of the court present. [3]

The court proceeded to the trial of Captain Rufo C. Romero, O 18350, Philippine Scouts (CE), 14th Engineers (PS), Fort William McKinley, P. I.

Assistant Trial Judge Advocate: The accused is present in court represented by the Defense Counsel and Assistant Defense Counsel. Does the accused desire to introduce Individual Counsel?

Accused: I do.

Assistant Trial Judge Advocate: Does the ac-

cused desire to have the regular Defense Counsel and Assistant Defense Counsel sit as associates and collaborate with the civilian counsel?

Accused: No. I want the regular detailed officers to conduct the defense and the civilian defense counsel cooperate and act as Associate Counsel.

Assistant Trial Judge Advocate (To Accused): You want the civilian counsel to act as associate and assistant to the regular detailed Defense Counsel and Assistant Defense Counsel?

Accused: Yes, sir.

President: Before we proceed the court desires that the names of the Defense Counsel, Assistant Defense Counsel and Associate Counsel be put into the record.

Associate Counsel: For the purpose of the record, I wish to give my name. It is Benjamin C. De Guzman, 15 Cementina, Pasay, Philippine Islands.

President (To Assistant Trial Judge Advocate): For the purpose of the record, Captain, we want it stated that the accused introduced as [4] his Defense Counsel, Major Howard D. Johnston, 23rd Infantry Brigade (PS); as Assistant Defense Counsel, Captain James M. Ivy, 57th Infantry (PS); and as Associate Counsel, Mr. Benjamin C. De Guzman, Manila, Philippine Islands.

Assistant Trial Judge Advocate: It has already been shown. — Copy of the charges in this case were served on the accused on the 31st day of October, 1940, at the Station Hospital, Fort William McKinley, Philippine Islands. You, Captain



Romero, are entitled to a copy of the record in this case without cost. Do you desire a copy of the record of trial?

Accused: Yes, sir.

Assistant Trial Judge Advocate: The accuser in this case is Lieutenant Colonel Harland F. Seeley, 57th Infantry (PS). The charges were investigated by Major E. R. Cowles, 57th Infantry (PS), and were forwarded by him directly to the Commanding General, Philippine Division. The Trial Judge Advocate at this time does not expect to call any member of the court now present as a witness for the prosecution in this case except Major Manzano, nor is any member the accuser. If there is any member of the court who has formed an opinion concerning this case, or who knows any of the material facts, or who, for any other reason, believes himself disqualified or is aware of any fact which might cause either the defense or the prosecution to challenge him, it is requested that he so announce in order that he may be excused or challenged.

Major Manzano: I am the accused's commanding officer in the 14th Engineers and as a member of the Regimental Staff I have taken part in certain preliminary investigation concerning this case and I have formed an opinion. [5]

Law Member: Does the defense wish to make any comment on that?

Defense Counsel: No, sir. The defense understands.

Law Member: Does the Trial Judge Advocate wish to make any comment?

Prosecution: It is the opinion of the Trial Judge Advocate that Major Manzano should be excused because he will be called as a witness in all probability.

Law Member: Major Manzano is excused from sitting as a member of the court in this case.

(Major Manzano withdrew)

Assistant Trial Judge Advocate: The Trial Judge Advocate does not desire to challenge any member for cause nor to exercise the right to one peremptory challenge. Have the accused's rights of challenge been explained to him by counsel?

Defense Counsel: Yes. The accused does not desire to exercise his right of challenge either for cause or peremptorily and is satisfied with the court as now constituted.

Assistant Trial Judge Advocate: Does the accused desire such rights further explained to him in open court?

Accused: No, sir.

Assistant Trial Judge Advocate: Captain Romero, are you satisfied to be tried by the court as it now sits?

Accused: Yes, sir.

The members of the court and the personnel of the prosecution were then sworn. [6]

The accused was then arraigned upon the following charge and specifications:

Charge: Violation of the 96th Article of War.

Specification 1: In that Captain Rufo C. Romero, Philippine Scouts, (CE), 14th Engineers (PS), an officer having access to secret maps pertaining to the national defense, to wit: Corregidor and Mariveles Vicinity (File No. 31 NE Copy No. 25); Tactical disposition of troops on Bataan, (File No. HI 7552-0176 Copy Numbers 307, 322, 424 and 452); Entrance to Manila Bay (File No. 31 Copy No. 1023); Traffic Circulation Map of Bataan (Copy No. 18) and Overlay No. 1 showing Defense Plan (File No. ODE 1228 copy No. 40), did, at Fort William McKinley, P.I., on or about October 15, 1940, willfully and unlawfully communicate the said maps to Mariano Cabrera and Anis Y. Gepte, persons not entitled to receive such information.

Specification 2: In that Captain Rufo C. Romero, Philippine Scouts (CE), 14th Engineers (PS), did, at Pasay, Rizal, P.I., on or about October 16, 1940, unlawfully reproduce certain official maps, marked "SECRET", of military installations, to wit: Corregidor and Mariveles Vicinity (File No. 31 NE, Copy No. 25); Tactical disposition of troops on Bataan (File No. HI 7552-0176 Copy Numbers 307, 322, 424 and 452); Entrance to Manila Bay (File No. 31 Copy No. 1023); Traffic Circulation Map of Bataan (Copy No. 18) and Overlay No. 1 showing Defense Plan (File No. ODE 1228, Copy No. 40), without first obtaining permission from the Commanding General, Fort William McKinley, P.I., or higher authority, said maps having no clear indication thereon that they had been censored by proper military authority.

Specification 3: In that Captain Rufo C. Romero, Philippine Scouts, (CE), 14th Engineers (PS), an officer having access to secret [7] maps pertaining to the national defense, to wit: Corregidor and Mariveles Vicinity (File No. 31 NE, Copy No. 25); Tactical disposition of troops on Bataan (File No. HI 7552-0176 Copy Numbers 307, 322, 424 and 452); Entrance to Manila Bay (File No. 31 Copy No. 1023); Traffic Circulation Map of Bataan (Copy No. 18); and Overlay No. 1 showing Defense Plan (File No. ODE 1228 Copy No. 40), did, at Pasay, Rizal, P.I., on or about October 15, 1940, conspire with Mariano Cabrera and Ignacio Agbay to unlawfully communicate the said maps to Anis Y. Gepte, a person not entitled to receive such information and to effect the object of said conspiracy did, thereafter on said date, in company with the said Anis Y. Gepte, visit the building at Fort William McKinley, P.I., in which the said maps were stored.

Specification 4: In that Captain Rufo C. Romero, Philippine Scouts, (CE), 14th Engineers (PS), did, at Pasay, Rizal, P.I., on or about October 15, 1940, conspire with Mariano Cabrera and Ignacio Agbay to unlawfully reproduce certain official maps, marked "SECRET", of military installations, to wit: Corregidor and Mariveles Vicinity (File No. 31 NE, Copy No. 25); Tactical disposition of troops on Bataan (File No. HI 7552-0176 Copy Numbers 307, 322, 424 and 452); Entrance to Manila Bay (File No. 31 Copy No. 1023);

Traffic Circulation map of Bataan (Copy No. 18); and Overlay No. 1 showing Defense Plan (File No. ODE 1228, Copy No. 40), without first obtaining permission from the Commanding General, Fort William McKinley, P.I., or higher authority, said maps having no clear indication thereon that they had been censored by the proper military authorities, and to effect the object of said conspiracy, did, on or about October 16, 1940, remove said maps from their place of storage at Fort William McKinley, P.I. to his home in Pasay, Rizal, P.I.

(Signature of accuser)

HARLAND F. SEELEY

Harland F. Seeley,

Lieut. Colonel,

57th Infantry (PS). [8]

### AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 28th day of October, 1940, and made oath that he is a person subject to military law and that he personally signed the foregoing charges and specifications, and further that he has investigated the matters set forth in specifications 1, 2, 3 and 4 of the Charge, and that the same are true in fact, to the best of his knowledge and belief.

(Signature) CARL H. SEALS

Carl H. Seals,

Colonel, AGD, Adjutant.

JA 201 Romero, Rufo C. 1st IND.

Headquarters Philippine Division, Fort William  
McKinley, P.I.,  
October 30, 1940.

Referred for trial to Lieut. Col. Lewis C. Beebe,  
57th Infantry (PS), Trial Judge Advocate, General  
court-martial appointed by paragraph 1, Special  
Orders No. 44, Headquarters Philippine Division,  
Fort William McKinley, P.I., October 30, 1940.

Employment of reporter is authorized.

By command of Major General PRATT:

(Signed) CARL H. SEALS

Carl H. Seals,

Colonel, AGD,

Adjutant General.

Prosecution: At this time has the accused any  
special pleas?

Defense: The defense states at this time that the  
accused has no special pleas to offer, but in view of  
the matter contained in [9] Paragraph 63, Page 49  
of the Manual for Courts-Martial and in Paragraph  
78 (a), Page 63 of the same authority, the defense  
moves that the court conduct an inquiry into the  
mental condition of the accused, with a view to de-  
termining whether or not at the time it is alleged  
these offenses were committed, the accused was able  
concerning the particular acts charged both to dis-  
tinguish right from wrong and to adhere to the  
right. In support of this motion, if the court so  
directs, the defense will introduce witnesses whose



testimony it is believed will be relevant to the matter.

President: The court will be closed.

(The court was cleared and closed and upon being opened, the following proceedings were had:)

President: The reporter will read from the record the motion made by the defense.

(The reporter read from the record as requested)

Defense: May it please the court, the defense wasn't quite able to follow that statement. I believe the motion was incorrectly recorded and with the court's approval, I will read the motion again.

President: In future, when the defense or the Trial Judge Advocate has something they are going to read, it will be an advantage if a copy can be furnished the reporter.

Defense: I have prepared this in writing with that in mind. I intended to furnish the reporter with this.

President: The Counsel for the Defense may re-read his statement. [10]

Defense: The motion made by the defense was as follows: That the court conduct an inquiry into the mental condition of the accused, with a view to determining whether or not the accused is competent to conduct or cooperate intelligently in his defense, and with respect to the offenses charged against him, whether or not at the time it is alleged

these offenses were committed, he was able concerning the particular acts charged both to distinguish right from wrong and to adhere to the right.

President: The accused is authorized to introduce evidence to sustain this motion.

Prosecution: May it please the court, before the accused introduces evidence to sustain the motion, the prosecution would like to have a copy of the statement submitted by the Defense Counsel.

Defense: The defense has submitted no statement. The defense feels that it is in its place to present a motion at this time. It feels that it is a subject into which the court should inquire. For that purpose it has made this motion, but so far as a statement is concerned, the defense has made no statement in argument or evidence. Perhaps I misunderstood the Trial Judge Advocate.

Prosecution: I understood that a copy of the remarks made by the Defense Counsel was prepared with a view to submission to the reporter.

Defense: I have here the motion introduced, in writing.

(Trial Judge Advocate examines written motion.)

Prosecution: Does the court desire that the defense produce evidence to sustain this motion? [11]

President: It is the court's desire. [12]

Prosecution: The prosecution has one further request. The prosecution requests permission of the court in its discretion that Fiscal Dinglasan be permitted to hear these proceedings and be present in

court. Fiscal Dinglasan is the United States Attorney in Manila—the Commonwealth attorney in Manila. The Associate Counsel for the accused is also the Individual Counsel for the co-accused—Cabrera—in this case. In the interest of the United States, it is requested that this Fiscal Dinglasan be permitted to be present whenever the Associate Counsel is present. [19]

Fort William McKinley, P. I.,  
November 8, 1940.

The court met, pursuant to adjournment, at 8:06 o'clock, A. M., all the personnel of the court, prosecution, and defense, who were present at the close of the previous session in this case, being present except:

Benjamin C. De Guzman, Associate Counsel.

The accused, the reporter and the witness were also present.

Member of the Court: May it please the court, in order to expedite the proceedings, I withdraw the motion I made just prior to adjournment yesterday.

President: Is the prosecution ready to proceed?

Prosecution: The interpreter was delayed a few minutes and is now on his way over.

President: The court will take a short recess.

The court then, at 8:08 o'clock, A. M., took a recess until 8:15 o'clock, A. M., at which time the personnel of the court, prosecution and defense, and the accused and the reporter resumed their seats. The Associate Counsel, the interpreter and the witness were also present.

Prosecution: The Trial Judge Advocate is ready to proceed.

President: Is the defense ready to proceed?

Defense: Yes, sir. The defense had concluded the examination of the witness on the stand at the time of adjournment yesterday. [36]

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## MRS. LORRAINE B. ROMERO

### Redirect Examination

Questions by Accused:

Q. Did I ever insult Major Guevera on the telephone?      A. Yes, you did.

Q. Please tell the court.

A. He insulted Major Guevera. (To Major Guevera) That was several months ago when he insulted you over the telephone. I remember that.[81]

The court then, at 5:20 o'clock, P. M., November 8, 1940, adjourned until 7:45 o'clock, A. M., November 9, 1940.

LEWIS C. BEEBE,

Lieutenant Colonel, 57th Infantry (PS),

Trial Judge Advocate.

Fort William McKinley, P. I.

November 9, 1940.

The court met, pursuant to adjournment, at 7:50 o'clock, A. M., all the personnel of the court, prosecution and defense, who were present at the close of the previous session in this case, being present except:

Benjamin C. De Guzman, Associate Counsel.

The accused and the reporter were also present.

President: It is noticed the Associate Counsel for the Defense is absent. Does the defense desire to make any comment on the absence of the Associate Counsel?

Defense Counsel: No, sir. The defense is ready to proceed. [119]

President: Proceed.

Prosecution: I desire to read from United States Code Annotated, Title 50, Section 45; from Executive Order of the President, March 22, 1940, defining certain vital naval and military installations and equipment, found in United States Code Annotated, Title 50, Section 45; from Title 50, Section 45 (b); from Title 50, Section 31, Subparagraph (d); and from Title 18, Chapter 4, Page 125, Section 88. The reading need not be recorded.

(The Trial Judge Advocate then read, in the order named, as above-indicated)

Prosecution: Does the court desire any additional law read? If not, the prosecution is ready to proceed with the introduction of evidence.

President: The prosecution may proceed.

Prosecution: Before proceeding, however, the prosecution would like to have the court take judicial notice of the contents of Army Regulations 380-5, which are the existing Regulations, dated June 10th, 1939, governing the safeguarding of military information.

Law Member: The court will take judicial notice

of Army Regulations 380-5 with respect to the subject referred to by the Trial Judge Advocate.

Prosecution: The prosecution also would like to have the court take judicial notice of Paragraph 43 (b) of Philippine Department Regulations, as amended by letter, Headquarters Philippine Department, dated October 12, 1940. These regulations prescribe who may reproduce secret or confidential maps. [193]

Defense Counsel: The defense would like to know the date of receipt of the amendment referred to.

Prosecution: Before going into that matter, the prosecution believes it should be read into the record—the paragraph which was in effect prior to the publication of the change dated October 12th, and that the change dated October 12th should also be read into the record.

Law Member: Subject to objection, the court will not take judicial notice of that Regulation and letter.

President: The Defense Counsel asked a question. I do not recall having heard it answered. Will the Judge Advocate answer it?

Prosecution: The prosecution stated that that matter would be brought out at the proper time. The Judge Advocate is not competent to testify as to what time any person received any given item.

President: Proceed.

Prosecution: The prosecution requested that these Regulations be read into the record—extracts



mentioned from Philippine Department Regulations.

Law Member: They may be read, subject to objection.

President: They may be read into the record.

(The Assistant Trial Judge Advocate then read as follows:) [194]

“PHILIPPINE DEPARTMENT  
REGULATIONS  
1938

HEADQUARTERS PHILIPPINE  
DEPARTMENT  
Manila, P. I.

October 1, 1938,  
(OFFICERS DIVISION COPY)

\* \* \*

SECTION VIII  
CORPS OF ENGINEERS

“43. Maps and Mapping.—(AR 100-15; 330-5; 600-700)

“a. Classification of maps and aerial photographs.—In accordance with instructions in AR 330-5 and the approved policy for the classification of maps and aerial photographs in the Philippine Islands, military maps and aerial photographs are classified as Secret, Confidential, and Restricted. The Assistant Chief of Staff, G-2, this Headquarters, is charged with

the classification of all maps and aerial photographs. When maps and photographs have been once classified the Department Engineer, the Department Air Officer, and the commanding general, Harbor Defenses of Manila and Subic Bays, are authorized to authenticate the classification of all maps and aerial photographs in the Philippine Islands.

“b. Reproduction of secret or confidential maps.—The reproduction by any means whatsoever of a secret or confidential map by any person or agency other than the Assistant Chief of Staff, G-2, this Headquarters, The Department Engineer, or the commanding general, Harbor Defenses of Manila and Subic Bays, is prohibited. When secret or confidential maps are reproduced, in whole or in part, by the commanding general, Harbor Defenses of Manila and Subic Bays, that officer will furnish the Assistant Chief of Staff, G-2, this Headquarters, with two (2) copies of the map reproduced for file with the General Staff map collection maintained in his office.”

Assistant Trial Judge Advocate: Opposite that on that page in the margin, there is this notation in ink: “Rescinded by Ltr. HPD dated Oct. 12/40 (300-4)”. This is the letter rescinding this paragraph:

(Assistant Trial Judge Advocate then read the following:) [195]

“HEADQUARTERS PHILIPPINE  
DEPARTMENT

Office of the Department Commander  
Manila, P. I.

In reply  
refer to:

300-4 Misc-AG

October 12, 1940.

Subject: Changes in Philippine Department Regulations.

To: All Post, Camp, Station and Depot Commanders.

“1. Pending revision of Philippine Department Regulations 1938, the following changes are announced.

“a. Paragraph 43 is rescinded.

“b. Section XVI is added as follows:

SECTION XVI

99. MAPS, MAPPING AND AERIAL  
PHOTOGRAPHS.

(AR 300-15; 380-5; 600-700; FM 30-20; FM 30-21)

\* \* \*

“b. Reproduction of Secret or Confidential Maps and Aerial Photographs.—The reproduction by any means whatsoever of a secret or confidential map or of a secret or confidential aerial photograph by any person or agency other than the Assistant Chief of Staff, G-2, this Headquarters, the Department Engineer,

The Commanding General, Philippine Division, the Commanding General, Harbor Defenses of Manila and Subic Bays, and the Commanding Officer, Nichols Field is prohibited. When new secret or confidential maps or secret or confidential aerial photographs are made by any office authorized to do so above, the office will furnish this Headquarters with two (2) copies of the map or photograph reproduced for file with the General Staff map collection maintained in the office of the Assistant Chief of Staff, G-2, this Headquarters.

\* \* \*

By command of Major General Grunert:  
(Signed) C. W. CHRISTENBERRY,  
C. W. CHRISTENBERRY  
Lieut. Colonel, A. G. D."

Prosecution: The prosecution is ready to proceed with the introduction of evidence.

President: Will any of this evidence be of such a secret nature that it will be necessary to exclude the spectators? [196]

Prosecution: Yes, sir.

President: Before any witness is brought on the stand in which the prosecution is aware that the witness will give testimony of a secret nature, the court will be advised in order that the spectators and all nonmilitary personnel may, if it is deemed necessary, be removed from the courtroom and the building.

Prosecution: The prosecution requests a one-minute recess.

President: The court will take a five-minute recess.

The court then, at 9:18 o'clock, A. M., took a recess until 9:25 o'clock, A. M., at which time the personnel of the court, prosecution and defense, and the accused and the reporter resumed their seats.

Prosecution: It is requested that all spectators be excluded from the courtroom at this time, in view of the nature of the evidence about to be offered.

President: Does that include all nonmilitary personnel?

Prosecution: No, sir.

President: All spectators will be excluded from the courtroom.

(The court was cleared)

President: Before any testimony is given, does the defense desire to have any pertinent law or regulations read?

Defense Counsel: May it please the court, the defense does not desire any matter read from pertinent law or regulations. The defense is ready to proceed with the trial. [197]

President: In connection with the remaining nonmilitary personnel in the court, I will read from Army Regulations 380-5, Paragraph 4 (c):

(The President then read as follows:)

“Oral Discussions. Classified Military Information.—Either public or private discussion of classified military information by members of

the military service with or in the presence of unauthorized personnel, is strictly forbidden.”

Also from the same Army Regulations, an extract from Paragraph 8 (g):

“Subject: Dissemination of Secret Matter.”

I will read the entire paragraph:

“Dissemination of secret matter will be held to the absolute minimum. Information as to contents or whereabouts of secret matter will be disclosed only to those persons whose duty requires such knowledge. It is exclusively for the official use of the person to whom divulged or issued, and who will be responsible for its safe custody or security. Its inviolability is the duty and responsibility of all persons having knowledge thereof, no matter how obtained.”

There remain in the court a few nonmilitary personnel. Is the testimony to be presented of such a character that they should be excluded at this time?

Prosecution: Not just at this time.

President: The prosecution will inform the President prior to any such testimony, in order that all may be excluded. Proceed with the examination. [198]

President: The reporter will read the last statement made by the Judge Advocate.

(Reporter read from the record as requested.)

President: All civilian personnel and all Military Police will leave the courtroom. Before leaving, I understand Major Taylor, the Provost Marshal Offi-



cer, is in charge of this prisoner. Major Taylor will remain in the courtroom as his immediate guard. The Military Police will be posted around the building.

(All civilian personnel then withdrew, including the following: Benjamin C. De Guzman, Associate Counsel; Fiscal Dinglasan, Spectator by permission of the court; Katherine Mason, Reporter; All Military Police.

The court then, at 10:07 o'clock, A. M., took a recess until 10:17 o'clock, A. M., at which time the personnel of the court, the prosecution and the defense (less Benjamin C. De Guzman, Associate Counsel), and the accused (with Major Taylor as guard), and the reporter (Sergeant John C. Gamble), and the witness, took their seats. [202]

The President called the Court to order, after recess, at 10:15 A.M.

John C. Gamble, R-3003311, Sergeant; Chemical Warfare Section, Detachment, Division Headquarters and Military Police Company (PS), Philippine Division; Fort William McKinley, P. I.; was duly sworn as reporter.

President: While waiting for all non-military and unauthorized personnel to be removed, Major Irwin will search the upper floor of the building to make sure that no one can listen in on the proceedings of this Court.

Major Irwin left the room and returned shortly.

Major Irwin: The Associate Defense Counsel has left this floor of the building. A civilian is in

the back wing of the building . One M. P. is on the top stairway. I would recommend that this M. P. be placed with the civilian witness in the north wing of this floor.

President: The Judge Advocate will arrange to adopt these suggestions and search the floor.

The Trial Judge Advocate left to carry out the instructions of the President.

The Trial Judge Advocate returned.

Trial Judge Advocate: The instructions of the Court have been carried into effect.

President: The case will proceed.

LIEUTENANT COLONEL H. A. SKERRY  
Witness for the prosecution.

Direct Examination  
(Continued)

Assistant Trial Judge Advocate: The witness is reminded that he is still under oath.

Trial Judge Advocate: Where is the place of storage of the secret maps of the 14th Engineers?

A. The very few secret maps of the 14th Engineers are stored with the many more secret maps held under the authority of the Division Engineer in a large, heavy, double-padlocked box in the map section of Regimental Headquarters, Fort William McKinley.

Q. I hand you this map marked for purposes of identification only "Exhibit No. One." What is it? [203]

A. This is a floor plan of the second floor of the

(Testimony of Lieutenant Colonel H. A. Skerry.)  
Building No. 332, containing the regimental headquarters of the 14th Engineers. In addition, the drawing indicates the surroundings of the building and roads. The situation on this map is as of October 15th and 16th, 1940.

Q. What can you say as to the accuracy?

A. The map is sufficient for the purpose desired. It is not precise.

Q. How could you tell if a map had been censored?

A. If a map had been censored there would be indicated thereon a statement to the effect that the map had been censored by authority of the party censoring and the undesirable information, secrets, or designs on that map would be deleted, therefrom.

Q. I hand you this map marked, for purposes of identification only, "Exhibit No. 3." Has it been censored?

A. This map marked as "Secret", "Exhibit No. 3", has not been censored.

Q. I hand you this map marked, for purposes of identification only, "Exhibit No. 4." Has it been censored?

A. This secret map, marked "Exhibit No. 4", "Copy No. 307", has not been censored.

Q. I hand you this map marked, for purposes of identification only, "Exhibit No. 5." Has it been censored?

A. This secret map marked "Exhibit No. 5", "Copy No. 322", has not been censored.

(Testimony of Lieutenant Colonel H. A. Skerry.)

Q. I hand you this map marked, for purposes of identification only, "Exhibit No. 6." Has it been censored?

A. This secret map, "Exhibit No. 6", "Copy No. 324", has not been censored.

Q. I hand you this map marked, for purposes of identification only, "Exhibit No. 7." Has it been censored?

A. The secret map, "Exhibit No. 7", "Copy No. 452", has not been censored.

Q. I hand you this map marked, for purposes of identification only, "Exhibit No. 8." Has it been censored?

A. The secret map, "Exhibit No. 8", "Map No. 1023", has not been censored.

Q. I hand you this map marked, for purposes of identification only, "Exhibit No. 9." Has it been censored?

A. The secret map, "Exhibit No. 9", "Copy No. 18", has not been censored. [204]

Q. I hand you this map marked, for purposes of identification only, "Exhibit No. 10." Has it been censored? Correction: I hand you this overlay, marked for purposes of identification only "Exhibit No. 10." Has it been censored?

A. The secret overlay, "Exhibit No. 10", further described as "Overlay No. 1, Copy No. 40," has not been censored.

Q. How are all of these maps classified under existing regulations?

(Testimony of Lieutenant Colonel H. A. Skerry.)

A. As "Secret" "Maps and Overlays."

Q. To what, in general, do these maps pertain?

A. All of these secret maps and overlays pertain, in general, to the defense of the Philippine Islands; and, in particular, to the defense in Bataan.

Q. In what way may maps be reproduced? Correction: Name some of the ways in which maps may be reproduced.

A. Maps may be reproduced by the blueprinting process, by the lithography process, by the duplicator process, by the ozalid process, by the black-and-white process, and by numerous other processes not now possessed by the map section of the 14th Engineers. In addition to the above usually used processes, the rather exceptional reproduction by photography should be added thereto.

Q. I hand you these negatives marked, for purposes of identification only: "Exhibits, Numbers 11, 12, 13, 14, 15, 16, 17" and "18." What are they?

A. "Exhibit No. 11" is a photographic negative of a map, showing roads and trails, corrected to February 6, 1939, of an area including the southern tip of Bataan, including the entire Island of Corregidor. There is nothing on this map to indicate the official title of the map from which it was taken, nor is the word, "Secret," indicated thereon.

Member of the Court: Just one minute. A statement was made: "Nothing on this map." I think you meant: "Nothing on this negative."

A. In so far as the negative itself is concerned

(Testimony of Lieutenant Colonel H. A. Skerry.)  
the word, "Secret," is not indicated thereon. The witness, however, is unable to state whether the information shown on this negative has been obtained from secret or non-secret sources.

Member of the Court: The original question was asked in an effort to determine if the witness meant "Negative" when he said "Map." The reporter will go back and read the testimony.

Reporter (reading from the record): "Exhibit No. 11" is a photographic negative [205] of a map, showing roads and trails, corrected to February 6, 1939, of an area including the southern tip of Bataan, including the entire Island of Corregidor. There is nothing on this map to indicate the official title of the map from which it was taken, nor is the word, 'Secret,' indicated thereon."

A. The witness meant to refer to the exhibit now in his hand, marked "Exhibit No. 11," as a negative.

Trial Judge Advocate: Please identify the exhibits more briefly.

A. "Exhibit No. 12" is a photographic negative of a secret map. "Exhibit No. 13" is a photographic negative of a secret map. "Exhibit No. 14" is a photographic negative of a secret map. "Exhibit No. 15" is a photographic negative of a secret map. "Exhibit No. 16" is a photographic negative of a secret map. "Exhibit No. 17" is a photographic negative of a secret map. "Exhibit No. 18" is a photographic negative of a secret overlay of a map.

Q. Are these negatives which you have just examined reproductions of maps?



(Testimony of Lieutenant Colonel H. A. Skerry.)

A. Yes, Sir.

Q. Did you at any time authorize anyone to communicate these maps to two civilians?

Defense Counsel: If it please the court, the Defense would like to ask the Court if these maps are to be introduced as evidence.

Trial Judge Advocate: The Judge Advocate does intend to introduce these maps as evidence.

Q. Was anyone authorized by you to communicate these maps or any other secret maps to Mariano Cabrera and Anis Y. Gepte?

A. No, Sir.

Trial Judge Advocate: Subject to objection by the Defense, the Prosecution desires to introduce in evidence the blueprint map marked "Exhibit No. One" and maps marked: "Exhibits Numbers 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18." Exhibits 3 to 18, inclusive, are later to be withdrawn from the record due to their secret contents. Additional copies of the blueprint which is marked "Exhibit No. One" are available for the examination of the Court.

Law Member: Does the Defense Counsel desire to examine any of these maps?

Defense Counsel: The Defense Counsel has examined these maps and has no objection to their introduction. "Exhibit No. One," it understands to be a floor plan [206] of Headquarters, 14th Engineers. The defense has no objection to the introduction of "Exhibit No. One", as identified by

(Testimony of Lieutenant Colonel H. A. Skerry.)  
the witness; but reserves the right to object later to the introduction of other "Exhibits No. One" which have not been identified, if such objection appears desirable.

President: The Court desires to know what is meant by "other 'Exhibits No. One.' "

Defense Counsel: I understood the Judge Advocate to say that he had blueprints marked "Exhibit No. One" for distribution to the Court. At present that appears to be of very minor importance. The Defense merely wished to note the right to object later to the introduction of those blueprints as such objection appeared desirable.

President: The exhibits which have been introduced for purposes of identification will be received in evidence as exhibits and as now marked.

Trial Judge Advocate: I have no further questions to ask this witness.

### Cross Examination

Defense Counsel: With reference to the testimony relative to censorship of maps, what is the meaning of "Censorship"? What effect does it have with respect to the maps that have been censored?

A. It is possible for the Assistant Chief of Staff, G-2, Philippine Department, to take a map which is marked "Secret" and then to block out the secret information on that map, and then, in his authority, to reissue it as a censored map. In other words, the objectionable material has been removed therefrom.

President: The Court will recess to meet at 2:00 P.M. for members to attend a conference.

(Testimony of Lieutenant Colonel H. A. Skerry.)

The Court then recessed at 11:10 A.M. until 2:10 P. M.; at which time the personnel of the Court; the personnel of the Prosecution; the Defense, less the Associate Counsel, Benjamin C. de Guzman; the Accused, with Major P. R. Taylor as guard; the witness; and the reporter took their seats.

President: The Court will come to order.

Assistant Trial Judge Advocate: The witness is reminded that he is still under oath.

Defense Counsel: The Defense Counsel desires to have the answer defining [207] "Censorship" read again.

Reporter (Reading from the record): "It is possible for the Assistant Chief of Staff, G-2, Philippine Department, to take a map which is marked 'Secret' and then to block out the secret information on that map, and then, in his authority, to reissue it as a consored map. In other words, the objectionable material has been removed therefrom."

Defense Counsel: I understand from that that censorship applies to information that may be added to a map after its original printing, but that the original map itself is never censored. Is that correct?

A. No, Sir. That is not correct.

Member of the Court: What was the answer? I am not sure but I still do not understand censorship.

Witness: I may explain it by a letter sent from the front line by a soldier in combat. He sends it

(Testimony of Lieutenant Colonel H. A. Skerry.)  
home to his family. That letter contains certain information which would endanger the national safety. That letter passes to a censor who removes therefrom the objectionable secret information, thereby making the letter of a non-secret nature, permitting its delivery to the young man's parents.

Q. That is just about what I said. The censorship is applied to the map after it is printed?

A. Yes. Or it may be censored on the original tracing and the print may then be safe to issue.

Q. The maps that have been introduced in evidence, you have testified have not been censored. When would such maps ordinarily be submitted for censorship?

A. That particular question is leading too far away from the point in hand. The point I want to bring out is that these are secret maps and are still secret maps. The question that you put is so far away from the case that it will only wind up in confusion.

Q. Is there any reason why these particular maps now in evidence should be censored?

A. No, sir.

Q. In the identification of the exhibits, I believe that their authenticity could be clarified a little. An overlay was introduced into evidence and [208] identified by you as a secret overlay. Can you state whether or not that overlay is secret by competent authority?

A. This same question, Sir, has been previously

(Testimony of Lieutenant Colonel H. A. Skerry.)  
taken up with me by the Office of the Department Engineer. It would appear that, in the majority of cases, as evidenced by "Exhibit No. 4," that the map, "Copy No. 307," is made secret by authority of the Commanding General, Philippine Department, and signed by the Assistant Chief of Staff, G-2. In the case of "Exhibit No. 10," the overlay referred to by the Defense Counsel is merely stamped "Secret." It is understood that this included the authority for reproduction by the Department Engineer. The Division Engineer has previously taken this matter up with the Office of the Department Engineer, suggesting that the specific authority for classifying "Secret be specifically placed thereon. There can be no question that the "Exhibit No. 10," the overlay referred to, is a secret map or overlay.

Q. You base that last statement on the fact that at some time someone has placed the word, "Secret," on the overlay. Is that correct?

A. It is correct and also the statement: "ODE, Miscellaneous, 1248, Copy No. 49," which means the "Office of the Department Engineer," who would only permit the word, "Secret," to be on there if such were the case.

Q. Do you understand the information that is portrayed on the overlay? In general?

A. Yes, Sir.

Q. Can you state whether or not that is current or correct information?

(Testimony of Lieutenant Colonel H. A. Skerry.)

A. The information contained in "Exhibit No. 10" is that of a tactical layout of a battle position with the line of resistance and the main line of resistance clearly shown; the date of the overlay being the 29th of January, 1940, may indicate the layout of an old battle position.

Trial Judge Advocate: I object. The present witness is not qualified as being competent to testify whether these are or are not current plans.

Witness: I am not so competent. I am merely trying to answer the question.

Law Member: Objection sustained.

Defense Counsel: I withdraw the question.

President: Put down: "The objection was sustained and the question was withdrawn." [209]

Defense Counsel In identifying these maps you stated: "I believe that the maps pertain to the defense of the Philippine Islands." Did you mean by that that the maps as printed pertain to the defense of the Philippine Islands?

A. No. I meant exactly what I said.

Q. Did you mean that the information added to the map pertained to the defense of the Philippine Islands?

A. I meant by that that the original map, plus the military information placed thereon, together, pertained to the defense of the Philippine Islands.

Q. Now, as to the identification of the photographic negative. In your identification you stated: "This is a photographic negative of a secret map."



(Testimony of Lieutenant Colonel H. A. Skerry.)  
Were you making that identification from your recognition of the topographic features displayed in the negative?

A. No, Sir. I was making that identification by finding upon that negative the usual statement by the Commanding General, authenticated by the Assistant Chief of Staff, G-2, that it was a secret map. If there is any question as to the identification of each negative, I can show the Defense Counsel the basis for my statement that it was a negative of a secret map.

Q. In any case would you recognize the terrain in the picture of the photographic negative you recognized?

A. I did not bother with that. I was only concerned with the authority of its being a secret map.

Q. Do you know of your own knowledge that the matter pictured in the photographic negative is actually that which it is represented to be by the printing on the negative?

A. It is a photographic negative.

President: The Court will recess for five minutes.

The Court then, at 2:46 P. M., took a recess until 2:52 P. M., at which time the personnel of the Court; prosecution; the defense, less the associate defense counsel, Benjamin C. de Guzman; the accused, with Major P. R. Taylor as guard; the reporter; and the witness resumed their seats.

President: The Court is called to order.

(Testimony of Lieutenant Colonel H. A. Skerry.)

Q. The Defense understands that the identification of these exhibits is to be [210] a subject of testimony later and consequently withdraws his last question. Colonel Skerry, can you state whether or not any of the maps here in evidence are obsolete or have been declared of no value by the competent authority?      A. I do not know.

Q. Are you an expert in photography?

A. No, Sir.

Q. Do you know whether or not any of the maps introduced in evidence have been reported destroyed?      A. I do not know.

President: Redirect. Any questions?

#### Redirect Examination

Trial Judge Advocate: Did you at any time give this accused, Captain Romero, permission to reproduce any of these maps which have been introduced in evidence?      A. I did not, Sir.

Q. Did you at any time give the accused, Captain Romero, permission to communicate the contents of these or of any other maps to Anis Y. Gepte and Mariano Cabrera?

A. I did not, Sir.

Trial Judge Advocate: I have no other questions.

President: Recross.

#### Recross Examination

Defense Counsel: On October 15th or 16th did the Division Engineer have authority to reproduce maps in his safe keeping?

(Testimony of Lieutenant Colonel H. A. Skerry.)

A. The Division Engineer did not have this authority.

Q. Is that true of both dates, October 15th and 16th?      A. Yes, Sir.

President: Are there questions from any members of the Court?

Member of the Court: From the numbers on those maps, are they from the file of the Division Engineer?

A. No, Sir. The registered numbers, in accordance with existing regulations [211] are placed thereon by the reproducing agency, in order to keep track of each and every secret map.

Member of the Court: Did those specific maps, with the serial numbers quoted, come from the files of the Division Engineer?

Trial Judge Advocate: I object to the question to this as well as many other questions. They will be brought out by later testimony as the witness on the stand is not the actual custodian of these maps.

Member of the Court: I withdraw my question.

Law Member: Were Mariano Cabrera and Anis Y. Gepte entitled to receive the information contained in these maps and overlays on or about October 15, 1940?      A. They were not, Sir.

Member of the Court: If you are, by competent authority, directed to make an overlay of a secret map, is that overlay secret?      A. It is.

Trial Judge Advocate: The Prosecution has no further questions, but desires authority to withdraw the maps under discussion from the record because of their secret nature, at the conclusion of this trial.

Defense Counsel: No objection from the Defense.

Law Member: Since there is no objection they may be withdrawn at the close of the trial.

President: The Court will take a recess.

The Court then took a recess at 3:06 P. M. until 3:12 P. M.; when the personnel of the Court; the personnel of the prosecution; the defense counsel, the assistant defense counsel, the associate defense counsel; the accused, with Major P. R. Taylor as guard; the witness; and the reporter, Katherine Mason, took their seats. [212]

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#### ANIS Y. GEPTE

Witness for the prosecution:

Q. Where did you go?

A. I went to the office of Mr. Agbay and we are supposed to meet Mr. Cabrera in the office. I met Mr. Agbay and Mr. Cabrera.

Q. You stated that you had asked them to show you maps and they said they would show you some maps at any time.

A. I told Mr. Cabrera that the Sultan told me that if they are really on the business, they should show him any maps. At this time, Mr. Agbay told

(Testimony of Anis Y. Gepte.)

me that we should go over to Tolentino Street that afternoon. When we arrive in the house of Mr. Agbay, he called up Mr. Cabrera. Mr. Cabrera then showed me a map, a blueprint marked "Restricted."

Q. What did you do then? What did you say?

A. I told him if he would allow me to take this map to the Sultan, in order to show him. At first we had discussed and after that agreed that I can take the map on condition that I must return it on the next day.

Q. What map did he give you at that time?

A. It was the Lingayan Gulf.

President: If reference is made to any particular maps, is it necessary for the remainder of the nonmilitary personnel to leave?

Prosecution: Sir, I don't believe so at this time.

Questions by Prosecution Continued:

Q. I hand you this map, marked for identification purposes only, Exhibit 2. (Handing map, Exhibit 2, to witness) What is it?

Associate Counsel: I object to that question, because the document speaks for itself. [218]

Law Member: Objection overruled.

Witness: (Examining Exhibit 2) It looks like the map that was given to me by Mr. Cabrera, of the Lingayan Gulf. It is marked "Restricted."

[219]

(Testimony of Anis Y. Gepte.)

Fort William McKinley, P. I.

November 13, 1940.

The court was called to order at 8:30 A.M., November 13, 1940.

All the personnel of the court, prosecution, and defense who were present at the close of the previous session in this case being present.

The accused, his guard and the reporter were also present.

President: Reporter will be sworn in.

Sergeant George G. Barry, 6575382, Div. Hq. Det., C. W. Section, Headquarters and Military Police Company (PS) was duly sworn in as the court reporter in this case.

### Direct Examination

(Continued)

Assistant Trial Judge Advocate: Witness is reminded that he is still under oath.

President: Court will be cleared and closed.

The court was closed at 8:35 A.M. and was reopened at 8:40 A.M.

Trial Judge Advocate: (To witness) You are reminded you are still under oath.

Defense Counsel: If it please the court the accused at this time requests that the court excuse the Assistant Defense Counsel, Captain Ivy, during the remainder of this case.

President: The court desires a reason for that request.

Defense Counsel: The accused feels a certain



(Testimony of Anis Y. Gepte.)

amount of antipathy against the Assistant Defense Counsel and feels that the Assistant Defense Counsel has a certain amount of antipathy toward the accused.

President: The accused does not request the presence and further services of the Assistant Defense Counsel?

Defense Counsel: That is the accused's opinion.

President: Is it his request that he be excused?

Defense Counsel: Yes sir.

President: Subject to objection to any member, the Assistant Defense Counsel is excused. Does the accused request any other officer to assist in his defense?

Defense Counsel: The accused does not.

President: There being no objection Captain Ivy is excused and will withdraw from the court.

[224]

President: The court will come to order. The court takes notice of the fact that the Associate Defense Counsel Benjamin C. de Guzman has withdrawn from the case. The case will continue. [247]

### Cross Examination

Defense Counsel: And it was at your instigation that maps finally were shown to you at Fort McKinley on October 15, 1940?

A. It was Major Evans, G-2 of the United States Army.

Defense Counsel: You were acting as an agent for Major Evans in this case?

(Testimony of Anis Y. Gepte.)

to be under the G-2 of the United States in this case. [266]

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MAJOR J. K. EVANS

witness for the prosecution:

I made all arrangements for search warrants and raiding parties in connection with the residence of the accused and the residence of the co-accused, Cabrera.

Questions by Prosecution Continued:

Q. With whom?

A. The arrangements were made with the Chief of the Information Division of the Constabulary, who detailed his assistant, Captain Gabriel, to work with me. When I was informed that all was in readiness and that the reproductions were in the process of being made, the raiding party started out and raided the two places simultaneously. After surrounding the house at 100 Calle Del Pan, the residence of the accused, I entered the front door, which was merely a screen door and was not fastened shut, and had proceeded about half way across the sala without seeing anyone, when the door to a bedroom in the back of the house opened and the co-accused, Cabrera, looked out. When he saw me, he ducked back in the door and closed the door. I ran the remaining distance and kicked the door open before it had fully closed, and found the accused, the co-accused, Cabrera, and the wife of the accused in

(Testimony of Major J. K. Evans.)

the room, and an individual whom I didn't identify at the time, had just ducked out a side door. The accused, his wife and Cabrera had started after him, but I stopped them and required them to go to the opposite side of the room. There was a wire coat hanger hanging on a light fixture in the middle of the room and to it were attached several photographic negatives, apparently drying, [273] for when I touched one it was still damp. At another place in the room there were still more negatives. I found a total of eight photographic negatives, all of them reproductions of secret maps of the United States Army pertaining to the national defense. In the room also were found several rolls of documents, which proved to be classified maps and overlays. In the basement of the house was a dark room which gave every evidence of having been recently used. A light was still burning inside the room and the equipment was in such disarrangement as to indicate recent use. Obtaining the keys to the accused's automobile, I opened the trunk of the car and found another large roll of classified documents belonging to the United States Army. The accused was taken into custody, and, at his request, was permitted to leave the house and enter my automobile so as to save him the embarrassment of being seen in that status by his children upon their return. The accused showed some signs of agitation, but took the whole thing more calmly, apparently, than did his wife, who seemed to be on the verge of

(Testimony of Major J. K. Evans.)

hysterics. I took possession of all the classified documents found, so as to prevent them being seen by other members of the raiding party which, by the way, included a Sergeant of the Military Police, United States Army, also, and I took the documents, the photographic negatives and the accused to Fort McKinley. [274]

### Cross Examination

(Continued)

Q. The Defense withdraws the last sentence. Why did you give Gepte a list of maps that you desired him to obtain?

A. I am unaware of having testified of having given him a list of maps.

Q. The witness Gepte has testified among other things that you told him to obtain the plan of the defense of Bataan or the Philippines, I cannot recall which.

A. I myself testified that I told him what to ask, that is not giving him a list. I make no list and gave him no list. During direct examination because the court was in open session I did not state in detail what I indicated that Gepte should ask for. I actually indicated that he should request maps in general showing dispositions on Corregidor and Bataan, the entrance to Manila Bay and the Department War Plan. He reported to me that he could obtain without delay everything except the war plan which he had been told might take a

(Testimony of Major J. K. Evans.)

month or two but could be obtained. My reason for indicating to him what to ask for was to test the information which I then had to the effect that the accused was prepared to furnish such things for a price. [285]

Examination by the Court

President: During your testimony you referred to the negative as a negative found by you in the raid. In what raid?

A. The raid by a Constabulary party, armed with a search warrant which took place at No. 100 Calle Del Pan at about 4:30 P.M. on October 16, 1940 and which I accompanied.

President: Who was the resident—what individual resided at that address?

A. That was the residence of the accused.

President: You testified that you obtained these negatives at the time of the raid and turned them over to Lt. Col. Seeley, were they continuously in your possession from the time you obtained them until you delivered them to Lt. Col. Seeley?

A. They were.

Defense Counsel: The search warrant that you had for the raid, authorized you to enter and search said premises, is that correct?

A. I had no search warrant for the raid. I did not make the raid.

Defense Counsel: Did you see the search warrant that the party had or some individual of the raiding party had?

(Testimony of Major J. K. Evans.)

A. Captain Gabriel of the Constabulary had the warrant in his possession and I heard him offer to read it to the accused which action the accused refused. I never had the warrant in my hands. [290]

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### CAPTAIN AUGUSTINE G. GABRIEL

witness for the prosecution.

#### Direct Examination

Questions by Prosecution:

Q. Please state your name, occupation and residence.

A. Augustine G. Gabriel, Captain, Philippine Constabulary, residing in Manila, Philippine Islands.

Q. Do you know the accused?

A. Yes, sir, I do.

Q. State who he is.

A. He is Captain Rufo C. Romero of the United States Army.

Q. How did the accused come to your attention on or about October 15th, 1940?

A. In the afternoon of October 15th, 1940, I accompanied Major Evans of the United States Army, with a couple of agents from our office, and proceeded to the residence of Captain Romero, located at Del Pan [293] Street, Pasay, Rizal. I was carrying with me a search warrant issued by the court. My mission was to assist Major Evans in his work of locating some maps—secret maps of the



(Testimony of Captain Augustine G. Gabriel.)

United States Army allegedly kept in the house of Captain Romero. When we arrived at the house of Captain Romero, we found one of the rooms closed and locked. Major Evans knocked at the door. The door was not opened immediately, and later I saw Major Evans force the door open. When the door opened, we saw Captain Romero and a Filipino inside the room. This room, it was later pointed out to us that it was the bedroom of Captain Romero. We saw Captain Romero and the Filipino civilian standing in the room. In the search we made, in the bedroom we found some photographic negatives hanging. Also, we found two rolls of maps. One, I remember, was marked, "Restricted," and the other roll, according to Major Evans, was a secret military map. The other map was a blue print map folded.—

Defense Counsel: May it please the court, the defense, at this time, objects to the admissibility of this evidence until it is proven that the search was legally conducted. It is true the witness has testified that he had in his possession a search warrant, but so far, there is nothing to show that the warrant was legally issued, nor that it directed a search of the house of Captain Romero, nor for what purpose the warrant was issued. These facts, I believe, should be proven before the testimony is admitted.

Law Member: Is there anything from the prosecution?

Prosecution: The witness is a Police Officer under whose direction the search warrant was legally

(Testimony of Captain Augustine G. Gabriel.)  
procured, and I cannot see the basis of his objection on the ground of lack of legality of the act. [294]

Law Member: Was the house which was searched on any military reservation?

Witness: I know for sure that the house referred to is outside of the military reservation.

Law Member: The objection is sustained and the evidence with regard to the search will not be considered at this time.

### Questions by Prosecution Continued

Q. Where is the search warrant which was procured at this time?

A. The search warrant was returned to the court—the Justice of the Peace Court of Pasay, who issued it.

Q. Who actually procured the search warrant?

A. Two agents from our office, under my direction, procured the search warrant.

Q. What are their names—the names of the officers who procured the search warrant?

A. Just now I can't recall the two agents who went to court to procure the warrant, but I have an officer here with me now, named Lieutenant Villafria, who prepared the application for the search warrant and examined the legality of the application and made certain it conformed to the requirements of the law, he being a lawyer.

Q. Did you have the search warrant with you at the time you entered Captain Romero's quarters?

A. Yes, sir, I did, and I made announcement to

(Testimony of Captain Augustine G. Gabriel.)

Captain Romero and Mrs. Romero that I had a search warrant with me and I told them that it is my duty to inform them and, if necessary, to read the contents of the warrant to them, and both of them told me there was no necessity for me to read the warrant and they allowed me to conduct the search in the house. [295]

Law Member: Was the search warrant issued and returned to any court or other tribunal having authority to issue it?

Witness: As I said, sir, the warrant was applied for in the Justice of the Peace Court in Pasay, and the Judge believed he had the right to issue the search warrant.

Law Member: Was that warrant returned to the Justice of the Peace for his records?

Witness: Yes, sir.

Prosecution: If the court desires, we can produce in court the officer who issued the warrant, to testify further concerning the legality of this act.

President: Can the warrant be obtained?

Prosecution: If necessary, I believe the warrant can be obtained. There would be a slight delay in order to send down to Pasay and get it. (To witness) It is in Pasay?

Witness: Yes, sir.

Law Member: That warrant would speak for itself and not require anyone to testify to it.

Prosecution: May we have a five-minute recess?

President: The court will take a five-minute recess.

(Testimony of Captain Augustine G. Gabriel.)

The court then, at 8:40 o'clock, A. M. took a recess until 8:47 o'clock, A. M., at which time the personnel of the court, the prosecution and the defense, and the accused, the reporter and the witness resumed their seats. [296]

President: The Judge Advocate will obtain the search warrant. The court will recess, and meet at 10:00 o'clock. The court is recessed.

(The court then, at 8:50 o'clock, A. M., took a recess until 10:27 o'clock, A. M., at which time the personnel of the court, the prosecution and the defense, and the accused, the reporter and the witness resumed their seats.)

The witness was reminded that he was still under oath.

Prosecution: May it please the court, the prosecution and the defense have agreed to stipulate concerning the facts in connection with the procurement and service of the search warrant on the premises of the accused, and I offer, subject to confirmation of the accused and his counsel, a statement as to the stipulation: The prosecution and the defense join in stipulating that the search warrant authorizing the search of the premises and person of the accused, at 100 Del Pan Street, Pasay, Rizal, Philippine Islands, on October 16th, 1940, was issued and executed by competent authority under the laws of the Philippine Commonwealth. This stipulation is being made to permit the continuance of the trial at this time, and with the

(Testimony of Captain Augustine G. Gabriel.)  
understanding that the original of the search warrant will be produced in court at a later time

Defense Counsel: The defense agrees to that stipulation.

Law Member: Does the accused understand what is involved in this stipulation?

Accused: I guess I do.

Law Member (To Accused): Do you understand it? [297]

Accused: I never saw it, sir. I just read it now. I think I understand it.

Law Member (To Accused): Do you want it read from the record by the reporter?

Accused: Not necessarily, sir.

Law Member (To Accused): You understand what was stipulated?

Accused: I think I do, sir.

Law Member: Subject to objection by any member of the court, the stipulation will be received as stated.

Prosecution: Will the reporter please read Captain Gabriel's last statement?

(Reporter then read from the record, Line 23, Page 293, through the end of the first paragraph on Page 294.)

Prosecution: The prosecution noted that the question originally asked Captain Gabriel, was, "How did the accused come to your attention on October 15th, 1940?" That date should read "October 16th, 1940."



(Testimony of Captain Augustine G. Gabriel.)

Defense Counsel: For the clarification of the record, the defense believes that the reply of the witness should also relate to the corrected date.

President: It will stand corrected.

Questions by Prosecution Continued:

Q. What was the date on which you executed the raid on the premises of the accused, Captain Romero?

A. It was on October 16th, 1940. [298]

Q. Will you please go ahead with your statement as to what further happened on those premises?

A. Adding to my testimony, with reference to the blue print folded map I saw that it is marked—it bears the mark “For Official Use Only.” Major Evans and I later left the bedroom while some of my agents remained in the room with instructions to continue making the search. Major Evans and I went to the basement of the house and there we found a dark room. We made an examination of the dark room and Major Evans pointed out to me that there were indications that very recently someone had been there, and I agreed to his opinion, because I saw some of the pans still wet. We made a search in the dark room and we found no maps. Later, we left the dark room and we saw the car of Captain Romero parked under the house in the basement. We searched the car and we later found out that the trunk of the car was locked, and we asked for the key and Mrs. Romero handed to us the key. We searched the trunk of



(Testimony of Captain Augustine G. Gabriel.)

the car and we found two rolls of maps, and according to Major Evans, those were secret maps belonging to the United States Army. After leaving the basement, we proceeded again to the house and searched the other rooms, and we also found nothing in the other places of the house. We came back again to the bedroom and I was informed by the agents who were instructed to make the search, that they found some materials which they thought were useful for photographic purposes. During our stay in the house, we also found another civilian, who was about to leave the house by taking the rear stairway, and he was placed under arrest.

Q. Who was this civilian?

A. This civilian was later identified to be Ignacio Agbay, and referring to the other civilian found in the room of Captain Romero, he was identified to be Cabrera. Immediately after Major Evans discovered [299] that we found the articles we were searching for, he made an announcement that Captain Romero and Cabrera, who was found with him, in the room—that they were under arrest. After that, I directed one of my agents to make a list of all of the articles found in the dark room in the basement of the house, and also an inventory list of the articles found in the bedroom. After the preparation of this list, Major Evans took all of the maps and photographic negatives and informed me he was going to take care of them

(Testimony of Captain Augustine G. Gabriel.)

and take them to the proper military authorities, and after taking Captain Romero, who was under arrest, he left us in the house of Captain Romero, and Major Evans told us he was proceeding to Fort McKinley.

Q. What persons did you instruct to make the list of materials, to which you have referred?

A. I instructed Agent Flores to prepare the list of the articles found in the bedroom, and Agent Alfonso to prepare the list of the articles found in the dark room.

Prosecution: No further questions.

#### Cross-Examination

Questions by Defense Counsel:

Q. Captain Gabriel, who composed the party that conducted the raid to which you have just referred?

A. We were two officers—Major Evans and myself—and the rest are agents of the Constabulary and an American operative who came along with Major Evans.

Q. Who was in charge of the raiding party?

A. I should say that both of us, Major Evans and I, were in charge of the raiding party. [300]

Q. Are you an officer of the law?

A. Yes, sir. I am vested with the authority as a Police Officer.

Q. Is Major Evans vested with that authority?

A. I am not very sure of myself, but my impression is that he is not vested with police powers like myself. [301]

FIRST LIEUTENANT MYRON E. PAGE

witness for prosecution.

On October 15th, Captain Romero returned from leave and became the Topographical and Intelligence Officer, in which capacity I had been acting in his absence. [346]

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MASTER SERGEANT GRACIANO DELDA

witness for prosecution.

Q. Do you know in what sort of paper Sergeant Dangoy wrapped the bundle of maps?

A. I cannot say exactly sir because in our office there are various kinds of wrapping paper some are Manila, the ordinary Manila wrapping paper and some are waste blue print paper.

Q. Do you use old copies of maps, blue prints?

A. Sometimes we do sir, after examining the importance of any paper that we consider waste.

Q. Have you used—do you use maps that are marked restricted for sketching paper on the back and wrapping paper?

A. I believe we have done that sir.

Q. Do you have any maps in the office that are not United States Government maps? That are the personal property of some individuals?

A. Yes sir we have various maps in the office published by the Philippine Government and I do not know if there are any maps that are the personal property of anyone. [365]

(Testimony of Master Sergeant Graciano Delda.)

Examination by the Court

Q. How do you know what maps to select?

A. In the first place I had a record of maps to be returned in addition to the record I suggested to Captain Romero that we had a bunch of secret maps that were out of date and they might as well be returned since they were obsolete.

Q. Who gave you the record to which you just referred?  
A. Lieutenant Page. [368]

Recross Examination

Questions by the Defense Counsel:

Q. Can you name or identify the secret maps that were out of date and should be returned?

A. If I see them sir and if I can check them against our records, check the numbers against our records I can identify those maps.

Q. Can you state in general what areas there—what areas were covered by these secret maps which were obsolete?

A. Yes sir, they covered the vicinity of Mari-veles and Fort Mills.

Q. Any more of Bataan and the vicinity of Mari-veles?

A. I do not remember sir.

Q. Did the maps to which you refer have on them any military information shown by conventional signs?

A. Yes sir, they were topographic maps of a

(Testimony of Master Sergeant Graciano Delda.)  
large scale and showed the terrain, roads and  
some maps showed disposition of troops, some  
maps—— [369]

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CAPTAIN AUGUSTIN G. GABRIEL

witness for prosecution.

Direct Examination

Questions by the Prosecution:

Q. Captain Gabriel in your previous testimony you made reference to a search warrant which was procured under your direction giving authority for a search of the premises and person of the accused, do you have that search warrant with you at this time?

A. Yes, sir, I do have it here with me.

Q. By whom was—I will change that. Was that search warrant issued by proper authority under the laws of the Philippine Commonwealth?

A. Yes sir, I am of the belief that the search warrant was issued by competent authority and issued in the proper and legal way.

Q. Will you please read the warrant for the information of the court?

Law Member: May I suggest that the Counsel be given the opportunity to examine the warrant. (Defense Counsel examines the warrant.)

Trial Judge Advocate: Will the Defense Counsel dispense with the reading of the search warrant. [371]

(Testimony of Augustin G. Gabriel.)

Defense Counsel: Yes sir.

Trial Judge Advocate: Does any member of the court desire to have the search warrant read into the record?

President: Is this search warrant to be introduced as a document in evidence before the court.

Trial Judge Advocate: The search warrant was produced in this court on the request of the court.

Law Member: Is it to remain in evidence?

President: The question was, is that copy of this search warrant to remain in evidence as part of this record?

Trial Judge Advocate: It cannot remain in evidence as an exhibit as it is a part of the permanent records of the issuing court.

Law Member: It being an official record of a court, it may be introduced if so desired with permission to withdraw it or return to its proper source and a true copy be furnished for the records.

Member of the Court: May it please the court that search warrant be read into record by the witness.

President: Any objection from any member of the court? (No response.) The search warrant will be read into evidence by the witness.

A. (Witness reads) "United States of America, Commonwealth of the Philippines. In the Justice of the Peace, Court of Pasay, Province of Rizal. The People of the Philippines versus Capt. Rufo Romero 100 Del Pan Street, Pasay, Rizal. Search



(Testimony of Augustin G. Gabriel.)

Warrant No. 121. To any Officer of the Law: Whereas on this day proof, by affidavit, having been presented before me by Agents Ceasar E. Santos and Santiago L. Safe of the Information Division, Philippine Constabulary, that according to confidential investigation and observation there is probable cause to believe that in the house of Captain Rufo Romero at 100 Del Pan Street, Pasay, Rizal, there are being kept stolen maps belonging to the United States Army. Therefore, you are hereby commanded during any time of day and night to make an immediate search on the person of Captain Rufo Romero and other persons that may be found thereat or in the premises of the above given address for the following property: 'Stolen Maps Belonging to United States Army' and, if you find the same or any part thereof, to bring it forthwith before me in the Justice of the Peace Court [372] of Pasay, Rizal. Witness my hand this 15th day of October, 1940, at Pasay, Rizal." Signature illegible but I know who signed it. "Justice of the Peace, Pasay, Rizal."

President: The court desires that this document be introduced as evidence, the original to be returned to the court from which it was issued. Any other question?

Trial Judge Advocate: No, sir. Has the document been received in evidence?

President: The document will be received in evidence unless there is an objection by the accused.

(Testimony of Augustin G. Gabriel.)

Law Member: The document should also be received as Exhibit No. 20 with permission to withdraw the original and to substitute a true copy though for the record.

Trial Judge Advocate: The Prosecution has no further questions. [373]

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MAJOR NARCISO L. MANGANO

Witness for the prosecution.

Q. Why did you open the safe for the accused?

A. Because the accused was reporting back for duty as intelligence officer and topographical officer and taking over the duties temporarily held by Lieutenant Page. [386]

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IGNACIO AGBAY

Witness for the Defense.

Counsel for the witness was admitted with the understanding that he could advise the witness whether or not to answer a question, and he is not to consult with anyone else. He will take his seat and comply with the instructions of the court. [431]

Q. Did you come to any agreement with Gepte at the London Restaurant?      A. Yes, sir.

Q. What was that agreement?

(Witness looks at his lawyer, who nods his head) [446]

(Testimony of Ignacio Agbay.)

A. The agreement was that I am going to help him if I—(To Reporter) Will you read what I said?

(Reporter read from the record, as requested.)

A. —will work with him under his instruction.

Q. Did you receive any offer of reward or pay?

A. Yes, sir.

Q. What was offered you?

A. Cash was the offer, and promise of a position as secret service or agent of the Philippine Constabulary, in case we will be successful on the case that he is after. (To Reporter) Please repeat that again.

(Reporter read from the record, as requested, last answer of witness)

Q. What case was that?

A. The case—the frame-up case that he proposes to me.

Q. And who was the party to be framed?

A. Captain Romero. [447]

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(Reporter read from the record, as requested, and Interpreter translated same to the witness)

(Mr. De Guzman, lawyer for the witness, spoke to the witness.)

Prosecution: The witness did not ask for advice of counsel.

President: (To Reporter) Enter in the record that lawyer cautioned the witness. [451]

President: Counsel has already been cautioned three times. He will now move his chair behind that table. (Indicating table about ten feet to the right rear of the witness)

(Mr. De Guzman, lawyer for the witness, then took his position as indicated by the President) [455]

Law Member: Now, let me add: The witness may, if he desires, ask his lawyer for advice. That is the purpose of having his lawyer here.

(Witness turns and looks at Mr. De Guzman, his lawyer, who shakes his head.) [457]

Witness: (To his lawyer) Can I answer that.

(Mr. De Guzman, lawyer for the witness, shook his head)

Witness: I cannot answer that question. [460]

Witness: (To his lawyer) Can I answer that?

(Mr. De Guzman, lawyer for the witness, nods his head.) [461]

Witness: (To his lawyer) Shall I answer that?

(Mr. De Guzman, lawyer for the witness, nods his head.) [463]

Witness: (To his lawyer) Can I answer?

(Mr. De Guzman, lawyer for the witness, shakes his head)

Witness: I don't want to answer, sir. [467]

President: The court notes the lawyer is absent.

(Interpreter and witness converse in Tagalog)

Witness: (Through Interpreter) I am going to stand without my lawyer. [472]

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(Benjamin C. De Guzman, lawyer for the witness, entered the courtroom.)

(Fiscal Dinglasan entered the courtroom and remained as a spectator)

**MARIANO CABRERA,**

Pazay, Rizal, a witness for the defense, was sworn and testified as follows:

Defense Counsel: May it please the court, the attorney for the witness on the stand, is present in court and requests permission to sit in the same capacity as he did for his other client, this last witness, Agbay.

President: The attorney for the witness may sit at the table and the witness may use the attorney as an adviser as to whether or not the witness shall answer the questions. This means there will be no consultation during testimony. The trial will proceed.

(Benjamin C. De Guzman, lawyer for the witness, took his position at a table to the right rear of the witness)

(Testimony of Mariano Cabrera.)

Questions by Assistant Trial Judge Advocate

Q. State your name, occupation and residence, please.

A. Mariano Cabrera, twenty-four age, movie actor and painter.

Q. Where is your residence?

A. Pasay, Rizal.

Q. Do you know the accused? A. Yes, sir.

Q. What is his name? A. Captain Romero.

Assistant Trial Judge Advocate: Defense witness. [497]

A. Excuse me, sir. Can I ask my counsel whether I will answer the question, sir?

(Witness looks at Mr. Benjamin C. De Guzman, his lawyer, who nods his head)

Witness: Yes, sir. [516]

Q. What were you going to do at that house?

(Witness turns and consults with his lawyer, Mr. Benjamin C. De Guzman, who stated he did not hear the question and asked to have it read. The Reporter read the question from the record and Mr. De Guzman nodded his head, after which the witness answered as follows:)

A. Well, we just went there, and I don't know what's to be done. \* \* \* [522]

Q. What was the proposition?

A. After Mr. Agbay stepped out, sir, Mr. Gepte told me, he says, "I am a 'D. I.' and you know Captain Romero is on the spot, and I promised my superiors that I will be investigating Captain



(Testimony of Mariano Cabrera.)

Romero," and after that, he told me, "I want to ask help from you." I said, "What kind of help could I do?" Upon knowing that I made a quarrel with Captain Romero about three or four days before that, Datu Ding has proposed and offered me that he will give me five hundred pesos and promised me, as I am very interested, to be a special agent, as I have had already recommendations for a long time. He promised me [524] that, "If you can help me and if we succeed, I could recommend you to Colonel Segundo, to be a 'D. I.' or a special agent, and I will give you the five hundred pesos that I promised." That is the proposition, sir.

Q. Knowing all of those things, you still state that you do not know why the group came in the car on the night of October 15th, to Fort McKinley. Is that correct?

A. Yes, sir, because Mr. Gepte instructed me, after having the proposition with him, just to follow every instruction he will order me, sir, and he say, "If I will be in Captain Romero's house, please stay aside and let me talk with him alone, if possible," so they are talking, sir, and I was away, over by the window by the son of Mr. Gepte.

Q. Were you, Agbay and Gepte laying a trap for Captain Romero?

A. I beg your pardon, sir?

Q. Were you, Agbay and Gepte laying a trap for Captain Romero?

A. That is what was supposed to be, sir.

(Testimony of Mariano Cabrera.)

Q. Why?

A. Because, according to Mr. Gepte, after having what he wants, he will have a premium from the Government, and he promised to give me five hundred pesos and he promised very much that he will recommend me to Colonel Segundo for me to be a special agent. That is the trap he laid out.

Q. Why should a trap be laid for Captain Romero? Did you believe he was about to do something wrong?

A. No, sir, but Mr. Gepte told me that Captain Romero was on the spot.

Q. Why?

A. I don't know, sir. He say that he was investigating Captain Romero because of the gambling. [525]

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Defense Counsel: May it please the court, the defense has no more witnesses to offer and the defense rests.

Law Member: Captain Romero, you have the legal right now, to do any one of several things, just as you choose. First, if you want to do so, you may be sworn as a witness and testify, under oath, in this case, like any other witness; or second, if you do not want to be sworn as a witness, you may, without being sworn, say anything about the case to the court, which you desire, that is, make what is called an unsworn statement; or you may,

if you wish, file a written statement with the court; or third, you may, if you wish, keep silent and say nothing at all. I will explain these rights to you in order: First, if you desire to be sworn as a witness and testify in your own behalf, you may do so, but you are not required to do so and you cannot be sworn unless you ask it. If you are sworn as a witness in your own behalf, that means that you take the stand like any other witness and promise, under oath, that you will tell the truth, the whole truth and nothing but the truth about this case. If you do that, whatever you say will be considered and weighed as evidence by the court, just like the testimony of any other witness. That is, the Trial Judge Advocate and any member of the court can question you to find out whether or not you are telling the truth and what weight should be given to your testimony, and questions will not be confined to just that part of your denial or explanation which you may give while testifying yourself under the guidance of your counsel, but they can question you about the whole subject of the offense charged against you, and may also ask you questions to test your worthiness of belief, but if your testimony should only be in denial or [551] explanation of just one or two of the offenses charged against you, and not about the others, and you should not say anything about the others, then they can question you about the whole subject of those offenses concerning which you testify, but they cannot question you about the offenses con-

cerning which you did not testify. If you do take the witness stand and fail to deny or satisfactorily explain any of the alleged wrongful acts about which you testify at all, and about which any evidence has been presented, such failure on your part may be commented on to the court by the Trial Judge Advocate when he presents his argument to the court at the end of the trial, and the court can take it into consideration in determining whether you are guilty or innocent of the offenses. Do you understand fully all that I have said to you so far?

Accused: Yes, sir.

Law Member: Second: Your second choice is that if you do not want to testify under oath, you may, without being sworn, say anything you desire, to the court, as an unsworn statement denying, explaining or excusing any of the acts charged against you here. You can do this yourself, or you can have your counsel do it for you, or you can do both; that is, you may say anything you desire yourself in this way, and have your counsel add anything else for you that you want him to. In making such a statement, you are not a witness and do not have to take an oath, and cannot be questioned or cross-examined by anyone. If you wish, you can file your statement, in writing, or have your counsel file a written statement for you, or you may both make an oral statement and also file a written statement, if you want to do so. In such statement, you can refer to the evidence produced against you [552] here, and you can explain

your motive in doing anything you may have done, or you can deny or contradict any testimony given or offer any excuse or explanation you may see fit, and you may also, if you wish, discuss the legal principles applying to your case, and make an argument to the court both upon the facts of the case and upon the law. Since such a statement is not given under oath and you cannot be cross-examined upon it, it cannot be given the same weight with the court as sworn testimony under oath, but it will be considered by the court and given such weight as it may seem to deserve. Futhermore, even though you may be sworn as a witness, you may also, if you wish, afterwards make a statement of this kind, not under oath, either verbally or in writing. Do you understand clearly all that I have said thus far?

Accused: Yes, sir.

Law Member: Third: Your third choice, if you do not want to testify as a witness in your own behalf, and do not desire to make an unsworn statement, either orally or in writing, is, if you so wish, to remain silent—to say nothing at all. You have a perfect right to do this if you wish, and if you do so, the fact that you stand on your legal rights and do not take the stand yourself, or make any statement, will not count against you in any way, with the court. It will not be considered by the court as any admission that you are guilty, nor can it be commented on in any way, by the Trial Judge Advocate in addressing the court. It is your



legal right to remain silent, if you wish to do so. Do you now understand all I have said?

Accused: Yes, sir. [553]

Law Member: You understand now, your right to do any one of these things, as I have explained them to you; that is, first, to testify as a witness, if you wish; second, to make an unsworn statement, either verbally or written, if you wish, or both, either without having been sworn or in addition to your testimony if you shall be sworn; and third, your right to remain silent and say nothing at all. Knowing these various rights, take time to consult with your counsel and then state to the court which you wish to do.

Accused: I will take the second choice; that is, make an unsworn statement, sir. The statement I will make does not include any secrets except those that I have reported to G-2, and if you do not want me to mention the star witness of the prosecution, I won't mention his name, but I will call him "Mr. X." I won't mention any name, but I will——

President: (To Accused) The court does not desire to hamper you in any way in making your statement. If you wish to make part of your statement with the spectators present, you may do so, and if you wish to make the other part of it with the spectators excluded, you will tell the court and we will then exclude the spectators.

Accused: I do not want to mention the name of the star witness on the other side. It has been the policy here not to mention him. I will call him



“Mr. X,” and then we can insert later on in the record that it was him whom I meant, and when I come to the secret part, I will warn the President, so we can exclude the spectators.

Law Member: Subject to objection by any member, the accused may proceed as he has requested.

[554]

Accused: Major Evans testified that he himself opened the trunk of my car and got the maps now in evidence. I believe, therefore, that these maps should be rejected as evidence, because Major Evans has no authority to execute a search warrant issued by the civil courts of the Philippine Islands. [555]

Neither the prosecution nor the defense having anything further to offer, the court was cleared and closed, and upon secret written ballot, three-fourths of the members present at the time the vote was taken concurring in each finding of guilty, finds the accused: [635]

Of Specification 1: “Guilty”

Of Specification 2: “Guilty”

Of Specification 3: “Guilty”

Of Specification 4: “Guilty”

Of the Charge: “Guilty”

The court was opened and the Assistant Trial Judge Advocate stated, in the presence of the accused and his counsel, that he had no evidence of previous convictions to submit.

The Assistant Trial Judge Advocate read the data as to age, pay and service, as shown on the Charge Sheet, as follows:

“Name of the accused: Romero, Rufo C., O 18350,

Captain, Philippine Scouts (CE), 14th Engineers (PS), Fort William McKinley, P. I.

“Age 32. Pay, \$230 per month. Allotments to dependents, None per month. Government Insurance deduction, \$17.35 per month.

“Data as to service: Cadet M. A., July 1, 1927 to June 10, 1931; 2nd Lt. P. S. June 11, 1931 to July 31, 1935; 1st Lt. Aug. 1, 1935, appointed Captain Sept. 9, 1940, accepted October 4, 1940.

“Data as to restraint of accused: Confined since October 16, 1940 at Fort William McKinley, P. I.”

President: (To Accused) Is the data as to service correct?

Accused: Yes, sir. I think so.

Neither the prosecution nor the defense having anything further to offer, the court was cleared and closed, and upon secret written [636] ballot, three-fourths of the members present at the time the vote was taken concurring, sentences the accused:

“To be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority may direct, for fifteen (15) years.”

The court was opened and the president announced the findings and sentence.

The court then, at 4:07 o'clock, P. M., on No-

vember 25, 1940, adjourned to meet at the call of the president.

CLIFFORD BLUEMEL,

Colonel, 45th Infantry (PS),  
President.

LEWIS C. BEEBE,

Lieutenant Colonel, 57th Infantry (PS),  
Trial Judge Advocate. [637]

HEADQUARTERS PHILLIPINE DIVISION  
Fort William McKinley, P. I.

January 14, 1941.

In the foregoing case of Captain Rufo C. Romero, O18350, Philippine Scouts (CE), 14th Engineers (PS), the sentence is approved and the record of trial is forwarded for action under the 48th Article of War.

J. M. WAINWRIGHT,

Major General, U. S. Army,  
Commanding.

#### RECOMMENDATION

HEADQUARTERS PHILLIPINE DIVISION  
Fort William McKinley, P. I.

January 14, 1941.

In view of the announced policy of the War Department to separate general prisoners convicted of offenses punishable by penitentiary confinement from general prisoners convicted of purely military offenses, or of misdemeanors (par. 90a, M.C.M.),

and in view of the peculiar knowledge of the accused of the national defense plans and of the topography of Luzon, with the attendant opportunity, due to lack of facilities for proper supervision, of transmitting such information to persons unauthorized to receive the same, it is recommended that if the sentence is approved, a penitentiary in the United States be designated as the place of confinement.

J. M. WAINWRIGHT,

Major General, U. S. Army,  
Commanding.

In the foregoing case of Captain Rufo C. Romero (O-18350), Philippine Scouts (CE), 14th Engineers (PS), the sentence is confirmed and will be carried into execution.

FRANKLIN D. ROOSEVELT

The White House,

July 5, 1941.

S.W.G.

General Court-Martial  
Orders, No. 10

War Department,  
Washington, July 8, 1941.

Before a general court martial which convened at Fort William McKinley, Philippine Islands, November 7, 8, 9, 10, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23 and 25, 1940, pursuant to paragraph 1, S. O. 44, Headquarters, Philippine Division, Fort William McKinley, P. I., October 30, 1940, as amended by paragraphs 2, 3, and 4, S. O. 45, Head-

quarters, Philippine Division, Fort William McKinley, P. I., November 4, 1940, was arraigned and tried——

Captain Rufo C. Romero (O-18350), Philippine Scouts (CE), 14th Engineers (PS).

Charge: "Violation of the 96th Article of War."

Specification 1.—"In that Captain Rufo C. Romero, Philippine Scouts (CE), 14th Engineers (PS), an officer having access to secret maps pertaining to the national defense, to wit: \* \* \* , did, at Fort William McKinley, P. I., on or about October 15, 1940, willfully and unlawfully communicate the said maps to Mariano Cabrera and Anis Y. Gepte, persons not entitled to receive such information."

Specification 2.—"In that Captain Rufo C. Romero, Philippine Scouts (CE), 14th Engineers (PS), did, at Pasay, Rizal, P. I., on or about October 16, 1940, unlawfully reproduce certain official maps, marked "Secret", of military installations, to wit: \* \* \* , without first obtaining permission from the Commanding General, Fort William McKinley, P. I., or higher authority, said maps having no clear indication thereon that they had been censored by proper military authority."

Specification 3.—"In that Captain Rufo C. Romero, Philippine Scouts (CE), 14th Engineers (PS), an officer having access to secret maps pertaining to the national defense, to wit: \* \* \* , did, at Pasay, Rizal, P. I., on or about October 15, 1940, conspire with Mariano Cabrera and Ignaciô

Agbay unlawfully to communicate the said maps to Anis Y. Gepte, a person not entitled to receive such information and to effect the object of said conspiracy did, thereafter on said date, in company with the said Anis Y. Gepte, visit the building at Fort William McKinley, P. I., in which the said maps were stored.”

Specification 4.—“In that Captain Rufo C. Romero, Philippine Scouts (CE), 14th Engineers (PS), did, at Pasay, Rizal, P. I., on or about October 15, 1940, conspire with Mariano Cabrera and Ignacio Agbay unlawfully to reproduce certain official maps, marked “Secret”, of military installations, to wit: \* \* \*, without first obtaining permission from the Commanding General, Fort William McKinley, P. I., or higher authority, said maps having no clear indication thereon that they had been censored by the proper military authorities, and to effect the object of said conspiracy, did, on or about October 16, 1940, remove said maps from their place of storage at Fort William McKinley, P. I., to his home in Pasay, Rizal, P. I.”

To which charge and specifications the accused pleaded “Not Guilty.”

### FINDINGS

Of Specification 1: “Guilty.”

Of Specification 2: “Guilty.”

Of Specification 3: “Guilty.”

Of Specification 4: “Guilty.”

Of the Charge: “Guilty.”



## SENTENCE

To be dismissed the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor, at such place as the reviewing authority may direct, for fifteen (15) years.

The sentence was adjudged November 25, 1940.

The following is the action of the convening authority:

HEADQUARTERS PHILIPPINE DIVISION  
FORT WILLIAM McKINLEY, P. I.

January 14, 1941.

In the foregoing case of Captain Rufo C. Romero (O-18350), Philippine Scouts (CE), 14th Engineers (PS), the sentence is approved and the record of trial is forwarded for action under the 48th Article of War.

(Signed) J. M. WAINWRIGHT,

(Typed) J. M. WAINWRIGHT,

Major General, U. S. Army,  
Commanding.

The sentence having been approved by the convening authority, the record of trial forwarded for the action of the President, and the record of trial having been examined by the Board of Review in The Judge Advocate General's Office, and the Board of Review having submitted its opinion in writing to The Judge Advocate General, and the record of trial, the opinion of the Board of Review, and the recommendations of The Judge Ad-

vocate General having been transmitted directly to the Secretary of War for the action of the President, and having been laid before the President, the following are his orders thereon:

In the foregoing case of Captain Rufo C. Romero (O-18350), Philippine Scouts (CE), 14th Engineers (PS), the sentence is confirmed and will be carried into execution.

FRANKLIN D. ROOSEVELT.

The White House,

July 5, 1941.

Captain Rufo C. Romero (O-18350), Philippine Scouts (CE), 14th Engineers (PS), ceases to be an officer of the Army at 12 o'clock midnight, July 10, 1941, and will be confined in the United States Penitentiary, McNeil Island, Washington.

By order of the Secretary of War:

G. C. MARSHALL,

Chief of Staff.

Official:

E. S. ADAMS,

Major General,

The Adjutant General.

EXHIBIT No. 20

United States of America  
Commonwealth of the Philippines

In the Justice of the Peace Court of Pasay  
Province of Rizal.

No. 121

THE PEOPLE OF THE PHILIPPINES

Versus

CAPT. RUFO ROMERO

100 Del Pan Street  
Pasay, Rizal.

SEARCH WARRANT

To Any Officer of the Law:

Whereas on this day proof, by affidavit, having been presented before me by Agents Cesar E. Santos and Santiago L. Safe of Information Division, Philippine Constabulary, that according to confidential investigation and observation there is probable cause to believe that in the house of Capt. Rufo Romero at 100 Del Pan Street, Pasay, Rizal, there are being kept stolen maps belonging to the United States Army.

Therefore, you are hereby commanded during anytime of day and night to make an immediate search on the person of Capt. Rufo Romero and other persons that may be found thereat or in the premises of the above given address for the following property: "Stolen Maps Belonging to United

States Army" and, if you find the same or any part thereof, to bring it forthwith before me in the Justice of the Peace Court of Pasay, Rizal.

Witness my hand this 15th day of October, 1940,  
at Pasay, Rizal.

(Signed) IGNACIO SANTOS-DIAZ,  
Justice of the Peace,  
Pasay, Rizal.

A True Copy:

LEWIS C. BEEBE,  
Lt. Col., 57th Inf., (PS),  
Trial Judge Advocate.

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[Endorsed]: No. 10242. United States Circuit Court of Appeals for the Ninth Circuit. Rufo C. Romero, Appellant, vs. P. J. Squier, Warden, United States Penitentiary, McNeil Island, Washington, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

Filed September 8, 1942.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10242

RUFO C. ROMERO,

Appellant,

. vs.

P. J. SQUIER, Warden, United States Peniteñ-  
tiary, McNeil Island, Washington,

Appellee.

STATEMENT OF POINTS

1. The District Court erred in holding that a search warrant issued by the justice of the peace of a municipality of a town in the Philippine Islands could be used as the basis of a Federal search and prosecution.

2. The District Court erred in holding that the exclusion from the court room during certain stage of the trial, of appellant's counsel of his own selection, was not a violation of the Sixth Amendment to the Constitution of the United States.

3. The weight of authority that prosecution cannot be had and could not stand, where it appeared that the accused was induced or led to commit the act charged by active cooperation and instigation of public officers, was neglected by the District Court.

4. The District Court erred in holding that the Record of the court martial transmitted to the Judge Advocate General for review and confirmation was not defective even when the maps introduced in evidence were not included.

5. When the court martial violated the constitutional rights of appellant the court martial thereby lost jurisdiction and was no longer a court of competent jurisdiction—it was then the duty of the District Court to release appellant upon writ of habeas corpus.

PEDRO P. SEMSEM,  
Attorney for Appellant.

[Endorsed]: Filed Sep. 8, 1942.